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In the Supreme Court of the United States

OCTOBER TERM, 1975

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA,
a Religious Body, et al.,

Petitioners,

vs.

DIONISIJE MILIVOJEVICH, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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TABLE OF CONTENTS

PAGE

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 2

CONSTITUTIONAL PROVISIONS INVOLVED 5

STATEMENT OF THE CASE 6

The Events In Issue 7

The History of This Litigation 10

REASONS FOR GRANTING THE WRIT 15

I. THE DECISION OF THE SUPREME COURT OF ILLINOIS, INVALIDATING THE REMOVAL AND DEFROCKMENT OF A BISHOP OF A HIERARCHICAL CHURCH, REINSTATING THE BISHOP, AND DECIDING OTHER INTERNAL CHURCH MATTERS, OFFENDS THE FIRST AND FOURTEENTH AMENDMENTS 15

A. Under This Court's Prior Decisions, The Illinois Supreme Court Was Required (But Failed) To Accept As Conclusive, Decisions Of The Holy Assembly Of Bishops On Matters Of Clerical Discipline And Church Organization 15

B. The Illinois Decision Improperly Sanctions Detailed Review Of The Merits Of The Decisions Of Hierarchical Churches And Judicial Interpretation Of Internal Church Regulations. This Court Should Establish That The So-Called "Fraud, Collusion, Or Arbi-

PAGE

trariness'' Exception Does Not Sanction That Kind Of Judicial Intrusion Into Internal Church Affairs 19

The Treatment Of The ''Exception'' In This Court's Prior Decisions 20

The Far-Reaching Consequences Of The Illinois Court's Decision 22

II. A DECISION BY THIS COURT IS NECESSARY IN ORDER TO TERMINATE THIS LENGTHY LITIGATION AND RESOLVE THE CONFLICTS BETWEEN THE ILLINOIS DECISION AND THE DECISIONS OF OTHER COURTS 27

CONCLUSION 30

TABLE OF AUTHORITIES

Drajelevich v. Rajsich, 24 Ohio App.2d 59, 263 N.E.2d 778 (1970) 27

Draskovich v. Pasalich, 280 N.E.2d 69 (Ind. App. 1972), *reh. den.*, 285 N.E.2d 830 (1972), *cert. denied*, 414 U.S. 976 (1973) 27

Ellesin v. Mijatovich, (No. 17363, Cir. Ct., Wayne Cty., Mich., 2/21/64) 28

Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1929) 12, 16, 18, 20-21

Holy Resurrection Church v. Milivojevich, (No. 63 S 34967, Super. Ct., Cook Cty., Ill., 12/6/66) 28

Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church, 344 U.S. 94 (1952) 6, 16, 17-18, 21

Kreshik v. St. Nicholas Cathedral of the Russian Orthodox Church, 363 U.S. 190 (1960) 16, 18

PAGE

Maryland & Virginia Eldership of the Churches of God v. Sharpsburg Church, 396 U.S. 367 (1970) 21

Mirkovich v. Bozanich (No. 109/1964, Supreme Court of Ontario, Canada, 4/20/64) 27

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) 16, 21, 23

Radakovich v. First Nat'l Bank of Joliet (No. W 64 G 4 E, Cir. Ct., Will Cty., Ill., 2/5/69) 27

Radojevich v. Holy Resurrection Church (No. 63 S 29832, Super. Ct., Cook Cty., Ill., 11/27/63) 27

Ralich v. Vukelich, No. 1710, Ohio Court of Appeals, 9th Dist. (June 29, 1966) 27

Serbian Eastern Orthodox Congregation v. Serbian Eastern Orthodox Congregation, 106 N.J. Super. 22, 254 A.2d 119 (1969), *cert. denied*, 54 N.J. 516, 257 A.2d 113 (1969), *cert. denied*, 397 U.S. 961 (1970) 27

Serbian Eastern Orthodox Diocese v. Ocokoljich, 72 Ill. App.2d 444, 219 N.E. 2d 343 (2d Dist. 1966) 10

Serbian Orthodox Church Congregation of St. Demetrios v. Keleman, (No. 5914, Ohio Court of Appeals, 9th Judicial Dist., 8/11/71), *cert. denied*, 406 U.S. 906 (1972) 28

Watson v .Jones, 80 U.S. (13 Wall.) 679 (1871) 16, 20

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioners, the Serbian Eastern Orthodox Diocese for the United States of America and Canada, a Religious Body; the Middle Western American, Western American, and Middle Eastern American-Canadian Dioceses of the Serbian Orthodox Church; and Bishops Firmilian Ocokoljich, Gregory Udicki, and Sava Vukovich, pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois entered on March 24, 1975, as modified upon denial of cross-petitions for rehearing on May 29, 1975.

OPINIONS BELOW

The Opinion of the Supreme Court of Illinois, reported at 60 Ill. 2d 477 and 328 N.E. 2d 268, is reproduced as Appendix A to this Petition. The Memorandum Opinion (entered December 28, 1972), and the Final Decree (entered April 30, 1973) of the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois, are reproduced as Appendix B. The Opinion of the Illinois Appellate Court in an earlier appeal is reported *sub. nom. Serbian Eastern Orthodox Diocese* v. *Ocokoljich* at 72 Ill. App. 2d 444 and 219 N.E. 2d 343 (1966), and is reproduced as Appendix C.

JURISDICTION

The judgment of the Supreme Court of Illinois, originally entered on March 24, 1975, was modified on May 29, 1975, upon denial of cross-petitions for rehearing. This Petition was filed within 90 days of May 29, 1975. This Court has jurisdiction to review the judgment by Writ of Certiorari pursuant to 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

Brief Summary of the Case

In 1963, the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church ("Mother Church"), concededly the legitimate and highest ecclesiastical authorities of that hierarchical church, suspended and ultimately removed Respondent Dionisije Milivojevich ("Dionisije") as Bishop of the American-Canadian Diocese, appointed Bishop Firmilian Ocokoljich ("Firmilian") as Administrator of the Diocese, reorganized the Diocese into three Dioceses, and in 1964 defrocked Respondent Dionisije as a Bishop and cleric of the Mother Church.

Dionisije refused to participate in the investigatory, removal and defrockment proceedings which followed his suspension. In fact, he and a faction of the members of the Diocese refused to recognize the proceedings and decisions of the Holy Assembly, attempted to secede from the Mother Church, and refused to recognize the Administrator. They remained in possession of the See of the Diocese and other Diocesan property; refused to permit those loyal to the Mother Church to come on or use Diocesan property; and asked the Illinois Courts to uphold both the validity of their opposition and secession, and Dionisije's unilateral refusal to obey Church law as interpreted by its highest judicatories.

The Supreme Court of Illinois substantially reversed the decree of the trial court and in effect attempted to reinstate Dionisije as a cleric and Bishop of the Mother Church and as Diocesan Bishop. Although no fraud, collusion or duress was claimed by Respondents or was found to exist by the Supreme Court of Illinois, that Court held the proceedings of the Holy Assembly of Bishops respecting Dionisije were procedurally and substantively defective under the internal regulations and procedures of the Serbian Orthodox Church (as interpreted by the Illinois Supreme Court), and were therefore "arbitrary" and invalid. In reaching this conclusion, the Illinois Court undertook to construe the internal regulations of the Mother Church, to adopt the construction of church law espoused by respondents' witness (a defrocked former cleric), and to reject that of the Holy Assembly of Bishops and petitioners' witnesses (three Bishop members of the Holy Assembly; the Secretary of the Holy Synod; and a Professor of Theology at St. Vladimir's Orthodox Theological Seminary). The Supreme Court of Illinois also invalidated both the Diocesan reorganization and Respondents' attempted secession.

Questions Presented

1. In the absence of fraud, collusion or duress, is it consistent with the First and Fourteenth Amendments to the United States Constitution for a State court, in reviewing the procedures followed by the highest authorities of a hierarchical church in removing and defrocking a Diocesan Bishop of that church:

> (a) to construe the internal regulations and procedures of the church differently from the construction given them by the highest church authorities and on the basis thereof;
>
> (b) to invalidate the removal and defrockment; and
>
> (c) to reinstate the former Bishop as a Bishop of the church and as Diocesan Bishop?

2. In the absence of fraud, collusion or duress, may a State court, consistent with the First and Fourteenth Amendments, invalidate the removal and defrockment of a Bishop by the highest authorities of a hierarchical church, on the ground that the removal and defrockment procedures employed were erroneous under the State court's interpretation of internal church laws and regulations, and therefore "arbitrary"?

3. Consistent with the First and Fourteenth Amendments, may a State court weigh documents and testimony of witnesses relating to the internal regulations and procedures of a hierarchical church, interpret that internal church law in contradiction to the interpretation made by the highest ecclesiastical authorities of that church and, on that basis, invalidate the removal and defrockment of a Bishop of that church?

4. Consistent with the First and Fourteenth Amendments, may a State court determine that the suspension of a Diocesan Bishop and the appointment of an administrator for the Diocese by the highest ecclesiastical authorities of a hierarchical church have expired, even though the suspension and appointment are considered as continuing by those ecclesiastical authorities?

5. Consistent with the First and Fourteenth Amendments, may a State court invalidate the reorganization of Dioceses by the highest authorities of a hierarchical church, on the ground that in the opinion of the Court the reorganization violates internal church laws and regulations?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved in this case are:

1. The First Amendment to the United States Constitution, which provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

2. The Fourteenth Amendment to the United States Constitution, which has long been interpreted to make the limitations of the First Amendment applicable to State action, and which provides in pertinent part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . . "

STATEMENT OF THE CASE

It is undisputed that the Serbian Orthodox Church (the "Mother Church") is an ancient, autocephalous, hierarchical church that came into existence in 1219 A.D.* The Seat of the Church is the Patriarchate in Belgrade, Yugoslavia. Its organization is episcopal, *i.e.*, it is governed by its Bishops. It is undisputed that the highest legislative, judicial, ecclesiastical and administrative authority of the Church is the Holy Assembly of Bishops—a body consisting of all Diocesan Bishops. The Holy Synod of Bishops is the highest executive body of the Church, and is composed of the Patriarch as President and four Diocesan Bishops selected by the Holy Assembly. The legitimacy of the Holy Assembly and the Holy Synod as the highest church judicatories is not disputed. A substantial majority of church members reside in Yugoslavia, but there are hundreds of thousands of church members in the United States and other countries.

In 1921, the Holy Assembly of Bishops created the Serbian Eastern Orthodox Diocese for the United States of America and Canada ("American-Canadian Diocese") for the Serbian Orthodox Church members who had emigrated from Serbia to the United States. Since 1921, the American-Canadian Diocese—like all other dioceses—has been governed by Diocesan Bishops and administrators appointed by the Holy Assembly. Each of these Bishops was a Yugoslav citizen at the time of his appointment, with the exception of Bishops Firmilian and Gregory, whose status is challenged by respondents, and who are naturalized American citizens.

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* This Court has stated that "[h]ierarchical churches may be defined as [1] those organized as a body with other churches [2] having similar faith and doctrine [3] with a common ruling convocation or ecclesiastical head." *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 110 (1952).

The Events In Issue.

Acting on the basis of persistent and widespread complaints and accusations from the clergy and church members in the United States and Canada, the Holy Assembly in its morning session on May 10, 1963 unanimously recommended that the Holy Synod institute disciplinary proceedings against Dionisije Milivojevich ("Dionisije"), the Diocesan Bishop of the American-Canadian Diocese. (A. 195, 1344-45.)* Dionisije had been a Bishop in Yugoslavia before he was designated by the Holy Assembly as Bishop of the American-Canadian Diocese and sent to the United States in 1939. The Holy Synod suspended Dionisije and appointed Firmilian Ocokoljich ("Firmilian"), then Dionisije's chief episcopal deputy, as Administrator of the American-Canadian Diocese, pending disposition of the charges against Dionisije. In its afternoon session, the Holy Assembly, recognizing the growth of the Church in the United States and Canada, reorganized the American-Canadian Diocese into three Dioceses, appointing the suspended Dionisije as Bishop of one of those Dioceses.

Dionisije's immediate and persistent reaction was to refuse to accept the Holy Assembly's actions, refuse to participate in the proceedings relating to the charges against him, and to call publicly for rebellion against and secession from the Mother Church.** Although he was

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* Record references herein are to the Abstract ("A") and Supplemental Abstract ("SA") filed in the Supreme Court of Illinois. Pursuant to Rule 21 of the Rules of this Court, Petitioners have asked the Clerk of the Supreme Court of Illinois to certify and transmit to this Court the record in this cause.

** Circular (May 25, 1963); press release (May 27); letter to Firmilian (May 30); circular (June 3). (A. 1629-35, 1689-90; SA. 215-17, 239-43, 690-701.)

under suspension, Dionisije continued to officiate as Bishop, purported to discharge all Diocesan officials who accepted the authority of the Mother Church, and refused to turn the administration of the Diocese over to Firmilian, the Administrator designated by the Holy Synod. See, *e.g.*, A. 337-38, 1636-37, 1640-41; S.A. 230, 288, 340, 765-67, 790-91.)

On June 13, 1963, the Holy Synod appointed a delegation of two Bishops and the Secretary of the Holy Synod to come to America to investigate the charges against Dionisije. (SA. 76, 244.) Dionisije reacted by demanding that he be given all accusations against him in writing, so that he could sue his accusers in the civil courts. He also refused to accord hospitality to the delegation of his fellow Bishops, refused to permit them to meet in the See of the Diocese, and announced that he would neither recognize nor attend any hearings conducted by the delegation.* This attitude was stridently reiterated at a meeting between the delegation and Dionisije and a group of his followers (July 5) in a local restaurant selected by Dionisije after he refused to permit the delegation to meet in the See of the Diocese. It was again repeated in a letter to the Patriarch (July 11), and a circular letter to all parishes in the Diocese (July 15). (A. 226, 624, 626, 1123, 1126-29, 1413-15; SA. 289-92.)

On the report and recommendation of the delegation, which detailed Dionisije's open defiance, rebellion and contempt, he was removed as Bishop at a special meeting of the Holy Assembly held on July 26-27, 1963. (SA. 69-71.) Dionisije continued his defiance and contempt by broad-

*Circular to the American-Canadian Diocese (June 28); letter to the delegation (July 5). (A. 1329-30, 1638-39; SA. 800-08.)

casting a circular (September 20) and by calling and presiding (in violation of church law) at two illegal Sabors (Church Councils), at which Dionisije and his followers purported to amend the Diocesan Constitution and secede from the Mother Church. (A. 1245-61; SA. 142, 250-51, 260-73, 294-96.)

On October 18, 1963, a formal written indictment against Dionisije was forwarded to him by the Holy Synod for his response. (A. 1362-1413; SA. 274.) On November 18 Dionisije wrote to the Holy Synod, demanding that verified copies of all the reports and complaints referred to in the indictment be sent to him, and that he be allowed a six-months extension within which to respond to the indictment. (A. 1272-73.) The Holy Synod granted Dionisije a one-month extension to mid-January. His request for verified copies of charges was denied on the ground that the charges were described in the indictment, that additional details were evidentiary in nature, and that there was no legal or canonical basis for forwarding such material to an accused Bishop. (A. 1274, 1276; SA. 77.)

Dionisije then refused to answer the indictment. (Telegram of January 13, SA. 280-81; letter of January 25, SA. 281-83.) As he had done in his prior letters and public statements, he attacked the Patriarch, Holy Assembly and Holy Synod as schismatic, pro-Communist, atheistic and heretical.

On March 5, 1964, the Holy Assembly tried Dionisije as a default matter, since he had refused to respond to or otherwise participate in the proceedings. The Holy Assembly voted to defrock him. Among the principal grounds for this judgment were several charges based upon the open and undisputed acts of defiance, rebellion and seces-

sion which Dionisije had committed subsequent to May 10, 1963, and his refusal to participate in the investigatory and disciplinary proceedings. (A. 1420-1439.)

Dionisije and his followers have persisted in their rebellion. Although a majority of the churches and communicants in the United States have remained true to the Mother Church, Dionisije and his minority faction followers have maintained possession, *pendente lite,* of the See of the Diocesan Bishop, and of monasteries, cemeteries, and homes for the aged located in Libertyville, Illinois; Shadeland, Pennsylvania; and Jackson, California.

The History of This Litigation

On May 27, 1963, before the investigating committee had even been appointed or the indictment returned, Dionisije issued a press release (SA. 239-40) stating that he would not recognize his suspension, and that he would vigorously litigate the matter in the civil courts of the United States. Acting upon this threat, Dionisije on July 26, 1963 commenced this action in the Circuit Court of Lake County, Illinois, asking that the Bishops appointed by the Holy Assembly be enjoined from interfering with his administration of the Diocese and that he be recognized as the true Diocesan Bishop. The three Bishops who had been appointed Bishops of the three reorganized dioceses later filed a counter-complaint which was consolidated with Dionisije's action.

In 1964 the trial court granted summary judgment in favor of Dionisije and dismissed the countercomplaint of the three Bishops. That decision was reversed by the Illinois Appellate Court, *Serbian Eastern Orthodox Diocese* v. *Ocokoljich,* 72 Ill. App. 2d 444 (2d Dist. 1966) (Appendix C). In its initial decision, the Appellate Court flatly con-

cluded that the suspension, removal and defrockment of Dionisije were valid and binding upon the civil courts. On rehearing, the Appellate Court reaffirmed that decision, but did accede to Respondents' insistence that they be given an opportunity to attack Dionisije's removal by proving at trial that it was a result of communist-influenced fraud, collusion or arbitrariness. The Appellate Court remanded the case for trial on all issues.

Following a trial of more than 100 days (which involved over 100 witnesses, more than 12,000 transcript pages, and nearly 600 exhibits), the trial court entered a Memorandum Opinion and a Final Decree (Appendix B), concluding, *inter alia,* that the challenged decisions of the Holy Assembly and the Holy Synod "were in no way tainted with fraud, collusion, or arbitrariness," and that Dionisije had been validly and properly suspended, removed and defrocked.

On March 24, 1975, the Supreme Court of Illinois issued an opinion substantially overturning many of the findings and decisions of the trial court. The Supreme Court of Illinois proceeded to construe the internal church constitutions of the Mother Church and of the Diocese, and the Penal Code of the Mother Church, and to weigh and evaluate the testimony of various witnesses on the disputed points of internal church law. Accepting the testimony of respondents' only witness on ecclesiastical rules, a defrocked former cleric of the Church, and rejecting the testimony of Petitioners' five expert witnesses,* the Su-

* Petitioners' witnesses included three members of the Holy Assembly of Bishops, one of them the author of the Church Penal Code; a clerk who had served for many years as secretary to the Holy Synod; and Dr. Meyendorff, a recognized expert in the field of ecclesiastical law.

preme Court of Illinois adopted a construction of the Church laws and regulations at variance with that adopted by the Holy Assembly. In so doing, the Court ignored the provisions of the Church Constitution, which empowers the Holy Assembly to interpret canonical ecclesiastical rules and expressly makes final the Holy Assembly's interpretations and decisions (Constitution, Articles 57, 64, 69.9). (A. 1514, 1516-1517).

On the basis of its construction of the law of the church, the Supreme Court of Illinois found that the proceedings against Dionisije were procedurally and substantively defective, and concluded that this made those proceedings "arbitrary" and invalid within this Court's *dicta* in *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929). The opinion of the Illinois Supreme Court in effect purported to set aside the 1963 removal and the 1964 defrockment of Dionisije.

In reaching those conclusions, the Court rejected Petitioners' contention that, in view of Dionisije's refusal to participate in the proceedings, his trial was properly conducted as a default matter under Article 66 of the Penal Code. That article (A. 1620-21) provides that if one charged with a violation refuses to participate in the proceedings, he is deemed to acknowledge the charges against him, and subsequent proceedings will be concluded without his participation.* The Illinois Court also rejected petitioners' argument that Dionisije's open and admitted defiance of Church authority constituted offenses for which he was properly removed and defrocked. Finally, the Court re-

* The Court's decision also appears to ignore Article 67 of the Church Penal Code (A. 1621), which provides: "The initiation of the Due Process is not bound by any formalities."

jected petitioners' detailed arguments that the evidence demonstrated compliance with all internal church regulations.

In addition, the Court affirmed the trial court's decision invalidating the action of the Holy Assembly in reorganizing the Diocese into three Dioceses as well as Respondents' attempts to secede from the Mother Church.

The Supreme Court of Illinois recognized that the Serbian Orthodox Church is hierarchical and episcopal, and that the decisions of the highest hierarchical church authorities are normally to be accepted as conclusive in disputes before the civil courts, even though civil rights are affected. However, the Court rejected Petitioners' contentions that the review and invalidation of the Mother Church's removal and defrockment of a Bishop, which was sought by Respondents and granted by the Supreme Court of Illinois, constituted an interference with the First and Fourteenth Amendment guarantees of religious freedom and was at odds with the prior decisions of this Court.*

Petitions for rehearing were filed by all parties. Petitioners specifically complained that the Court's action in construing internal church law and rejecting the construction of that church law by the Holy Assembly, as well as the review and purported invalidation of the proceedings against Dionisije, constituted an improper interference in

* These constitutional contentions were asserted by Petitioners throughout the litigation. See, *e.g.*, A. 26, 32, 35, 37 (from the pleadings); Brief in the Supreme Court of Illinois, pp. 54-59, 62-70, Petition for Rehearing, pp. 2-14. These contentions were partially accepted in the Memorandum Opinion of the trial court (A. 105-109), and were recognized but rejected by the Supreme Court of Illinois in its opinion.

religious affairs and an infringement of the constitutional guarantees of the First and Fourteenth Amendments.

On May 29, 1975, the Supreme Court of Illinois denied the petitions for rehearing. However, without granting rehearing or permitting argument on the issue, the Court modified its original opinion by adding two sentences which suggest that the suspension of Dionisije by the Holy Synod is no longer effective.* The Court's opinion purports to have the effect of reinstating Dionisije as Diocesan Bishop (and apparently as a member of the Holy Assembly of Bishops), although the church authorities consider him to have been suspended, removed and defrocked.

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* The language added upon rehearing appears in italics at page 28 of Appendix A.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE SUPREME COURT OF ILLINOIS, INVALIDATING THE REMOVAL AND DEFROCKMENT OF A BISHOP OF A HIERARCHICAL CHURCH, REINSTATING THE BISHOP, AND DECIDING OTHER INTERNAL CHURCH MATTERS, OFFENDS THE FIRST AND FOURTEENTH AMENDMENTS.

A. Under This Court's Prior Decisions, The Illinois Supreme Court Was Required (But Failed) To Accept As Conclusive, Decisions Of The Holy Assembly Of Bishops On Matters Of Clerical Discipline and Church Organization.

The basic premise of the recognition of hierarchical decisions is really not in dispute. As the Supreme Court of Illinois itself stated in this case (328 N.E. 2d at 280):

> "Plaintiffs argue and defendant Bishop Dionisije does not dispute that the Serbian Orthodox Church is a hierarchical and episcopal church. Moreover, the parties agree that in cases involving hierarchical churches the decisions of the proper church tribunals on questions of discipline, faith or ecclesiastical rule, though affecting civil rights, are accepted as conclusive in disputes before the civil courts."

The status of the Serbian Orthodox Church as a hierarchical and episcopal (*i.e.*, governed by Bishops) church is clear from the evidence and is not disputed. Furthermore, there is no dispute concerning the legitimacy of the Holy Assembly of Bishops and its executive arm, the Holy Synod, as the highest ranking religious

bodies in the church hierarchy. Nor is there any dispute that it is those bodies, and they alone, which under church law possess power and jurisdiction with respect to the removal and defrockment of Bishops.

The principle that civil courts are required to accept as conclusive the decisions of the highest ecclesiastical judicatories of a hierarchical church in religious disputes (even though those disputes also involve civil rights) is established by the decisions of this Court in *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679, 727-729 (1871), and in *Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16 (1929), both decided without reference to any express constitutional provisions, and in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church,* 344 U.S. 94, 113-115, 120-121 (1952) (later opinion, *sub nom. Kreshik* v. *St. Nicholas Cathedral of the Russian Orthodox Church,* 363 U.S. 190 (1960), and *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 445-449 (1969)), which were expressly based upon the guarantees of religious freedom set forth in the First Amendment and made applicable to the States by the Fourteenth Amendment. Each of these cases, as does the case at bar, involved a schismatic religious group which sought unsuccessfully to have the civil courts determine that the church hierarchy had violated internal church laws relating to discipline, organization or doctrine.

The classic statement of the principle is the following often-quoted language from *Watson* v. *Jones,* 80 U.S. at 727, 729:

> "In this class of cases [hierarchical churches] we think the rule of action which should govern the courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding upon them, in their application to the case before them . . ."
>
> ". . . .
>
> "It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

The case most closely analogous on the facts is *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church,* 344 U.S. 94 (1952). There, the bulk of the American communicants of the Russian Orthodox Church had rejected the authority and decisions of the Patriarch and of the Mother Church in Russia, on the ground that those decisions were improper under church law and tradition, and that the Mother Church was dominated by the Communist government of Russia. This Court struck down a New York State statute which recognized the American dissenters as the true Russian Orthodox Church. On the basis of the principle that civil courts must recognize hierarchical decisions, this Court then recognized the Mother Church's appointee as the legitimate Archbishop of the Archdiocese of North America and the Aleutian Islands. As such, the Patriarch's appointee was entitled to possession of the Cathedral, which was at issue in the litigation.

In analyzing the constitutional principles applicable to the selection and removal of clergy by hierarchical churches, this Court stated in *Kedroff* (344 U.S. at 116):

> "Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a

part of the free exercise of religion against state interference.'"*

A much-quoted section of Justice Frankfurter's concurring opinion in *Kedroff* answers the contention of Respondents that this case is essentially a property dispute, because the identification of the legitimate holder of a clerical position has the effect of determining the right to the possession or control of property. Mr. Justice Frankfurter stated (344 U.S. at 121):

> ". . . St. Nicholas Cathedral is not just a piece of real estate. It is no more that than is St. Patrick's Cathedral or the Cathedral of St. John the Divine. A cathedral is the seat and center of ecclesiastical authority. St. Nicholas Cathedral is an archiepiscopal see of one of the great religious organizations. What is at stake here is the power to exercise religious authority. That is the essence of this controversy. It is that even though the religious authority becomes manifest and is exerted through authority over the Cathedral as the outward symbol of a religious faith."

After *Kedroff* was remanded, the New York State Courts determined after a trial that the Mother Church and the Patriarch were dominated by the Russian Government and therefore decided that the Patriarch's appointee could not occupy the Cathedral. This Court summarily reversed the New York decision, holding (in a decision particularly applicable to the interference by the Supreme Court of Illinois in the case at bar) that civil interference in internal religious matters is no more permissible if done by a court than by the Legislature. *Kreshik* v. *St. Nicholas Cathedral of the Russian Orthodox Church*, 363 U.S. 190 (1960).

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* The footnote to this quotation refers to *Gonzalez* v. *Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929). See p. 21, *infra*.

B. The Illinois Decision Improperly Sanctions Detailed Review Of The Merits Of The Decisions Of Hierarchical Churches And Judicial Interpretation Of Internal Church Regulations. This Court Should Establish That The So-Called "Fraud, Collusion, Or Arbitrariness" Exception Does Not Sanction That Kind Of Judicial Intrusion Into Internal Church Affairs.

Of course, the Supreme Court of Illinois did not concede that its decision contravened the principles enunciated in this Court's prior decisions. Instead, the Court purported to review and reverse the Holy Assembly's decisions under the so-called "fraud, collusion or arbitrariness" exception to the rule requiring recognition by civil courts of decisions by hierarchical church tribunals. That action is unsound and is at odds with this Court's prior decisions.

It is important to make clear what Petitioners seek (and what they do not seek) by this petition. Petitioners *do not* seek to have this Court review the detailed evidence relating to the internal Church regulations and procedures of the Serbian Eastern Orthodox Church and determine whether Petitioners and the Holy Assembly of Bishops on the one hand, or Respondents and the Supreme Court of Illinois on the other hand, were correct in their interpretation of those internal Church regulations.

Petitioners *do* ask this Court to decide whether, under the First and Fourteenth Amendments, a civil court may undertake to interpret disputed questions of internal Church law, reject the interpretations of the Church's highest judicatories, weigh the evidence adduced in a Church disciplinary proceeding conducted by the Church's highest judicatory, and invalidate the Church's decision as "arbitrary," as though the Court were reviewing the decision of an administrative agency.

We respectfully submit that this Court should grant certiorari in order to examine, define and clarify the basis and scope of the "fraud, collusion and arbitrariness" exception. This Court should make it clear that the exception does not permit civil courts to engage in detailed procedural and substantive review of proceedings of church tribunals. The "exception" to the general rule of recognition of church decisions as defined and applied by the Supreme Court of Illinois is so broad as to nullify the general rule itself.

The Treatment Of The "Exception" In This Court's Prior Decisions.

The "fraud, collusion or arbitrariness" exception has been mentioned in *dicta* in several of this Court's decisions. However, this Court has never defined the "narrow" scope of review of church decisions permitted by the exception. Nor has this Court had occasion to apply the stated exception to the facts of any particular case.

There was no suggestion of the "exception" in this Court's decision in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). It first appeared in *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929), as an unexplained exception to the general rule of recognition of decisions by church tribunals.* However, the opinion in *Gonzalez* made it clear that the stated exception was not in issue in that case (280 U.S. at 18):

> "There is not even a suggestion that he [the Archbishop] exercised his authority arbitrarily."

Since *Gonzalez*, the exception has been referred to in *dicta* (but never applied) in three of this Court's decisions.

In one of these cases, *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 447, 450-451 (1969), this Court quoted the language from *Gonzalez* (393 U.S. at 447) and made the following statements, which constitute the Court's only exposition concerning the "fraud, collusion, or arbitrariness" exception.* (393 U.S. at 450-451):

> "The departure-from-doctrine approach is not susceptible of the marginal judicial involvement contemplated in *Gonzalez*. Gonzalez' rights under a will turned on a church decision, the Archbishop's, as to church law, the qualifications for the chaplaincy. It was the archbishopric, not the civil courts, which had the task of analyzing and interpreting church law in order to determine the validity of Gonzalez' claim to a chaplaincy. Thus the civil courts could adjudicate the rights under the will without interpreting or weighing church doctrine but simply by engaging in the narrowest kind of review of a specific church decision—i.e., whether that decision resulted from fraud, collusion, or arbitrariness. Such review does not inject the civil courts into substantive ecclesiastical matters."

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* The precise language was (280 U.S. at 16):

> "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise."

* The other two cases which referred to the *Gonzalez* language are *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952) (quoting *Gonzalez* in footnote), and *Maryland & Virginia Eldership of the Churches of God* v. *Sharpsburg Church*, 396 U.S. 367, 369 (1970) (concurring opinion quoting *Gonzalez*).

Thus, the exposition was limited to a caution that the exception involves only "marginal judicial involvement" and "the narrowest kind of review," and that it should not "inject the civil courts into substantive ecclesiastical matters." Even in making these limited explanatory statements, the Court defined them as *dicta,* stating in a footnote (393 U.S. at 450):

> "We have no occasion in this case to define or discuss the precise limits of review for 'fraud, collusion, or arbitrariness' within the meaning of *Gonzalez.*"

This Court, then, has never applied or even explored the bases, content or limits of the "fraud, collusion, or arbitrariness" exception. Certainly this Court has never sanctioned the expansive interpretation of the *Gonzalez* exception asserted by the Supreme Court of Illinois as the basis upon which to overturn the Holy Assembly's decision in the case at bar.

The Far-Reaching Consequences Of The Illinois Court's Decision.

The "fraud" and "collusion" portions of the *Gonzalez* exception are not involved in this case. Neither fraud or collusion has been proved by Respondents or found to exist by any Court. Indeed, the only remotely similar allegation—Dionisije's persistent assertion prior to trial that the Church proceedings against him were instigated and controlled by the Communist government of Yugoslavia—was never supported by proof, was expressly rejected by the trial court (App. B at 45), was not argued by Respondents in the Supreme Court of Illinois and has now been abandoned.

In any event, the concepts of "fraud" and "collusion" are fairly precise and are well calculated to limit review

of ecclesiastical decision by civil courts to the "marginal" or "narrowest kind" of review mandated by this Court in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 450-451 (1969), discussed *supra.*

The problem arises, in this case and potentially in many others, from the Illinois Court's expansive interpretation of "arbitrariness." That term, unlike "fraud" or "collusion," cannot be said to have any well-defined meaning in this context. As the Illinois decision shows, it is possible for a court to misinterpret "arbitrariness" in a manner which extends the judicial role in church cases far beyond the "marginal" and "narrowest kind" of review contemplated by this Court.

The kind of reviewing authority assumed by the Supreme Court of Illinois over church tribunals includes at least two elements which constitute dangerous inroads upon the Constitutional guarantees of religious freedom and the rights of churches to regulate their own internal affairs.

First, the Supreme Court of Illinois appears to equate the standard of "arbitrariness" with a kind of review based on "manifest weight of the evidence." Indeed, the Supreme Court of Illinois expressly concluded that the trial court's finding that Dionisije's removal and defrockment were not the result of arbitrariness was "contrary to the manifest weight of the evidence." (App. A at 28.)

It is apparent that the Supreme Court of Illinois treated the case according to the same standards it would have used to review the decisions of an administrative agency or of a secular, private organization. But considering the strong prohibition expressed in the Constitution against governmental interference in the exercise of religion, it

is surely inappropriate to subject a decision of the Holy Assembly of Bishops of the Serbian Orthodox Church to the same type of procedural and substantive review as would be applied to a decision of the Illinois Commerce Commission, a civil service commission, or a local medical society.

Second, and perhaps more important, the approach adopted by the Supreme Court of Illinois necessarily involved the Court in a detailed analysis and interpretation of the internal regulations and practices of the Serbian Orthodox Church. The end result of this process was that the Court rejected the construction and interpretation of internal church laws and regulations made by the highest body of the Church; substituted its own interpretation; and thereby attempted to compel the Mother Church to reinstate a Bishop which it had removed and defrocked. Indeed, Dionisije himself had repeatedly repudiated the Mother Church and rejected any relationship with it. The Illinois Court took this action in the face of express provisions of the Church Constitution (see, *e.g.*, A. 1516) which make the Holy Assembly the final arbiter and interpreter of church law.

In reaching this result, the Illinois Court preferred the interpretation of the Church constitution, Penal Code and of other internal church regulations by Respondents' single alleged "expert" witness (a defrocked former Serbian Church cleric) over interpretations made by the Holy Assembly itself and expressed at the trial by Petitioners' five expert witnesses. Those witnesses consisted of three members of the Holy Assembly of Bishops (one of them the author of the Penal Code), and a Cleric who had served as Secretary of the Holy Synod for many years (each of whom came to America to testify), and a well-recognized

independent and learned theological scholar and expert in the field of ecclesiastical law.

This was not a case involving conceded or undisputed violations of church regulations by the hierarchical authorities. Rather, each of Respondents' complaints was based upon their disputing of the Holy Assembly's construction of church law. It is impossible to square the detailed parsing and weighing of internal church regulations found in the Illinois Court's opinion with the "marginal" and "narrowest kind" of review prescribed in this Court's decisions. Rather, the Illinois Court "injected the civil courts into substantive ecclesiastical matters"— an encroachment by secular authorities on religious liberty which is forbidden by this Court.

An extreme example of the lengths to which the Supreme Court of Illinois went in substituting its notion of proper procedure for the regulations adopted by the Church is found in the Court's treatment of Article 66 of the Penal Code. That article expressly provides that if a cleric of the Mother Church charged with a violation refuses to participate in the proceedings, he is deemed to acknowledge the charges against him, and subsequent proceedings will be concluded without his participation. (A. 1620-21.)

Despite the undisputed evidence that from the moment of his suspension Dionisije had refused to participate in the church proceedings, had defied and denounced the legitimate church authorities, and had taken the dispute to the civil courts, the Supreme Court of Illinois for some unexplained reason refused to sanction the use of the default procedures prescribed in Article 66 in Dionisije's case.

Apparently, the Illinois Court concluded that Dionisije should be excused for refusing to participate in the proceedings against him because he objected to some of the procedures being followed. But this conclusion makes a mockery of the Illinois Court's pretense that it was only reading and applying the Mother Church's own regulations. There is *no support* in the testimony or exhibits for the interpretation that an accused can safely "opt out" of the proceedings by making objections to the manner in which the proceedings are being conducted. None of the witnesses (including Respondents' alleged expert) testified to such an "interpretation" of church law.

The fact is that such judicial rewriting of church regulations as that in which the Illinois Supreme Court indulged must be expected if secular courts are allowed to set themselves up as appellate tribunals over the regularly constituted judicatories of hierarchical churches.

The decision of the Supreme Court of Illinois with respect to the continuing effectiveness of the suspension of Dionisije is constitutionally invalid on similar grounds. The Illinois Court held on rehearing that the suspension had expired on the ground that the Penal Code limits its operation to one year. That decision inexplicably refuses to toll the running of the one-year period by reason of the pendency of this lengthy civil litigation which was initiated by Dionisije himself.

Similarly, the Illinois Court reached the incredible result of forbidding the Mother Church from making any reorganization of its own Dioceses. Respondents' contention that this is a "property" case, is specious. Whoever administers the property, all agree that it must be held in trust for the benefit of the members of the Serbian Orthodox Church in the United States and Canada.

II.

A DECISION BY THIS COURT IS NECESSARY IN ORDER TO TERMINATE THIS LENGTHY LITIGATION AND RESOLVE THE CONFLICTS BETWEEN THE ILLINOIS DECISION AND THE DECISIONS OF OTHER COURTS.

This case has been in litigation since mid-1963. At least twelve other lawsuits involving Dionisije's defiance and rejection of Church authority and his instigation and leadership of the minority separatist movement have been filed in various state courts by church congregations. The complaints in these cases have requested the civil courts to determine whether control of the facilities and property of local churches should be awarded to Dionisije's followers or to those loyal to the Mother Church. Many of these cases have been fought to state courts of last resort and to this Court on petitions for certiorari. Eight of these suits were initiated by Dionisije's followers.

Nine of the ten suits which have been concluded were decided in favor of those loyal to the Mother Church on the same basic issues presented in this litigation.*

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* *Draskovich* v. *Pasalich*, 280 N.E. 2d 69 (Ind. App. 1972), *reh. den.*, 285 N.E. 2d 830 (1972), *cert. denied*, 414 U.S. 976 (1973); *Ralich* v. *Vukelich*, No. 1710, Ohio Court of Appeals, 9th Dist. (June 29, 1966); *Serbian Eastern Orthodox Congregation* v. *Serbian Eastern Orthodox Congregation*, 106 N.J. Super. 22, 254 A. 2d 119 (1969), *cert. denied*, 54 N.J. 516, 257 A.2d 113 (1969), *cert. denied*, 397 U.S. 961 (1970), *rch. den.*, 397 U.S. 1058 (1970); *Mirkovich* v. *Bozanich* (No. 109/1964, Supreme Court of Ontario, Canada, 4/20/64); *Drajelevich* v. *Rajsich*, 24 Ohio App. 2d 59, 263 N.E. 2d 778 (1970); *Radojevich* v. *Holy Resurrection Church* (No. 63 S 29832, Super. Ct., Cook Cty., Ill., 11/27/63); *Radako-*

(footnote continued)

Only this Court can terminate this lengthy, divisive and expensive litigation and put an end to a situation in which the decisions of the Mother Church have been recognized as valid in (*e.g.*) Indiana, in New Jersey, in Ontario, Canada, and by two courts in Ohio, while Dionisije's position has been upheld by the Supreme Court of Illinois and perhaps by one court in Ohio.

Furthermore, the circumstance that the opinion of the Supreme Court of Illinois states that the case is remanded to the trial court for "further proceedings" does not suggest that review by this Court should be postponed to a later appeal. The decision of the Supreme Court of Illinois is a final determination on all of the pending issues, and leaves nothing to be accomplished on remand. It is apparent from the opinion that the Supreme Court of Illinois has made final decisions concerning the validity of the Diocesan reorganization, of Respondents' attempted secession, and of the 1963-1964 removal and defrockment proceedings against Dionisije.

Of course, the opinion allows the Mother Church to institute new proceedings against Dionisije. But any challenge to new disciplinary proceedings would have to be made in a new lawsuit.

(footnote continued)

vich v. *First Nat'l Bank of Joliet* (No. W 64 G 4 E, Cir. Ct., Will Cty., Ill., 2/5/69); *Ellesin* v. *Mijatovich* (No. 17363, Cir. Ct., Wayne Cty., Mich., 2/21/64); *Holy Resurrection Church* v. *Milivojevich* (No. 63 S 34967, Super. Ct., Cook Cty., Ill., 12/6/66) (consent decree against Dionisije). The tenth case is distinguishable in that the Court did not rule on the validity of the acts of the Mother Church. *Serbian Orthodox Church Congregation of St. Demetrios* v. *Keleman*, No. 5914, Ohio Court of Appeals, 9th Judicial Dist. (8/11/71), *cert. denied*, 406 U.S. 906 (1972).

Moreover, it is certain that any new proceedings will be challenged by Dionisije and his followers irrespective of the nature and merits of the proceedings. More litigation instigated by them in the Illinois Courts will wend its way over the years to the Illinois Supreme Court. There the new proceedings will be subjected to the type of detailed, nit-picking review on procedural and substantive grounds which is suggested and encouraged by the opinion below. Consequently, the fact that the opinion contains an order of remandment does not detract from its essentially final character.

The decision of the Supreme Court of Illinois must be reviewed now by this Court so that the Serbian Orthodox Church, its clergy and its hundreds of thousands of faithful in this country are accorded the guarantees of the First and Fourteenth Amendments and this sad episode in the history of an ancient church may be brought to an end.

CONCLUSION

We respectfully pray, for the reasons stated above, that the petition should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

No. 46670

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA et al., Appellees, v. DIONISIJE MILIVOJEVICH et al., Appellants.

Opinion filed March 24, 1975. — Rehearing denied May 29, 1975.

MR. JUSTICE KLUCZYNSKI delivered the opinion of the court:

This is a direct appeal granted under Supreme Court Rule 302(b) (50 Ill.2d R. 302(b)) from a judgment of the circuit court of Lake County principally involving a dispute over the control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada (hereinafter the American-Canadian Diocese or the Diocese) and the property and assets of that diocese. The parties, as they are presently constituted, are as follows:

Plaintiffs:	Defendants:
Bishop Firmilian Ocokoljich	Bishop Dionisije Milivojevich
Bishop Gregory Udicki	Serbian Orthodox Monastery of St. Sava (monastery corporation)
Bishop Sava Vukovich	
Serbian Eastern Orthodox Diocese for the United States of America and Canada (the religious body in this country)	Serbian Eastern Orthodox Diocese for the United States of American and Canada (an Illinois religious corporation)

Plaintiffs sought, in part, to have the trial court find that Bishop Dionisije had been removed as bishop of the Diocese, that the Diocese had been reorganized into three new

dioceses, and that the three bishops be granted control of the Diocese [sic] and its property. Defendants filed a counterclaim seeking, among other relief, an injunction to prevent the plaintiffs from interfering with the assets of the defendant corporations. The circuit court held, in pertinent part, that Bishop Dionisije had properly been removed as bishop of the American-Canadian Diocese, that the reorganization of the Diocese into three new dioceses was illegal and invalid, and that only Bishop Firmilian as the duly appointed administrator of the Diocese could exercise authority over the Diocese and its property. Both plaintiffs and defendants appeal the trial court decision.

This case was originally filed in 1963 by the present defendants, and the plaintiffs countered by filing a separate complaint. Both parties sought the same relief as was stated above. The trial court consolidated the actions and, based upon the pleadings, depositions and affidavits, granted the defendants herein summary judgment and dismissed the complaint of the plaintiffs. On appeal, the appellate court reversed the summary judgment and the order dismissing the complaint, and remanded the cause with directions for a full hearing on the merits. (*Serbian Eastern Orthodox Diocese for United States of America and Canada* v. *Ocokoljich*, 72 Ill. App. 2d 444, *appeal denied*, 34 Ill.2d 631.) On remand and over defendants' objection, the trial court allowed the Serbian Eastern Orthodox Diocese for the United States of America and Canada, the religious body in this country, to be designated a party plaintiff.

The similarity of certain named parties involved in this appeal requires some clarification prior to any understandable recitation of the facts. In addition to the last-named plaintiff and the last-named defendant as previously set forth, there is the entity which is the subject of this controversy, the Serbian Eastern Orthodox Diocese for the

United States of America and Canada (the American-Canadian Diocese). The trial court on remand made certain findings of fact as to the existence of these parties, namely, that the Illinois religious corporation is a secular arm of the American-Canadian Diocese, and that the religious body in this country is a religious body duly organized and existing since 1921. The trial court, thus, found that the religious body in this country was synonymous with the American-Canadian Diocese. We conclude, however, that these findings are contrary to the manifest weight of the evidence, and they are, therefore, set aside. (*Turner* v. *Board of Education*, 54 Ill.2d 68, 72-73; *Kenny Construction Co.* v. *Metropolitan Sanitary District*, 52 Ill.2d 187, 196.) It is unnecessary at this point to relate the facts which form the basis of our determination, since the factual recitation which follows amply discloses that basis. The American-Canadian Diocese and the Illinois religious corporation (the last-named defendant) are one and the same as of the time of the Diocese's incorporation in May, 1935. If a distinction is to be made between the organizational entity of the Diocese and the individual church members of the Diocese when viewed as a common group, the latter could properly be referred to as a religious body. We do not infer, however, that this latter entity is represented by any of the plaintiffs in this action. The subject of this controversy and a party defendant is the American-Canadian Diocese organized as an Illinois religious corporation.

The complete factual background essential for an understanding of this case is not in all respects certain, since the parties are in dispute concerning it, and the trial court entered its findings of fact only as to those facts upon which it based its decision. We will recite the complete factual background as we understand it from the record and the briefs submitted by the parties. However, as to the testi-

mony of the numerous witnesses in the trial court, we will recite only that testimony we deem necessary for a complete determination of the issues on appeal.

In the 1890's, persons of Serbian descent migrated to North America, where they formed completely autonomous religious congregations throughout the United States and Canada. Until 1920 these Serbian Orthodox churches were under the jurisdiction of the Russian Orthodox Church, the oldest Orthodox church in this hemisphere. The Russian Orthodox Church, however, was burdened with its own requirements and was unable to care for the local Serbian needs. The minutes of early meetings of Serbian priests and people held in 1913 and 1916 indicate a strong desire by these people to have their churches in America under the jurisdiction of the Serbian Orthodox Church with its See in what is now Belgrade, Yugoslavia.

In 1913 a meeting of Serbian priests and people was called for the purpose of organizing the Serbian Orthodox Church in North America. During this meeting a constitution was drafted and accepted. Article 4 of this constitution provided that the Serbian Orthodox Church in the United States was to have its own Church National Representation and Church National Governing Body and that it would govern autonomously in matters of church, school, education and property.

In 1916 a Serbian Priests' Assembly was held and presided over by Bishop Evdokim of the Russian Orthodox Church. Business and problems facing the Serbian churches in America were discussed and resolved. A "Normal Constitution for the North American Orthodox Diocese" of 1909, apparently a constitution taken from the Russian Orthodox Church, was accepted by the priests' assembly with the necessary revisions to delete the references to the

Russian Orthodox Church and refer instead to the Serbian Orthodox Church. It was also decided that several paragraphs would be added to this constitution to describe the duties of the Bishop's Aides. The 32 Serbian Orthodox parishes existing in the United States at the time of this meeting were divided into 4 presbyteries or divisions: Eastern, Middle, First Western, and Second Western. The Bishop's Aides w re four Serbian priests elected to accept jurisdiction over the four presbyteries and to act as mediators between the bishop and the people.

In 1917 the Russian Orthodox Church sent Father Mardary Uskokovich (a Serbian educated in Russian Orthodox seminaries) to America with instructions to organize an independent Serbian diocese. Four years later the Holy Assembly of Bishops of the Serbian Orthodox Church sent a delegation to America to determine the status of the Serbian parishes. Apparently as a result of Father Mardary's efforts and the report of the delegation, the Serbian Orthodox Church recognized that the necessary structure was present in America for establishing a diocese, and designated a Serbian bishop to carry out the formal organization of a diocese. The designated bishop, however, did not become a permanent resident of the United States, and Father Mardary was appointed as Resident Administrator of the Diocese until his election as bishop of the Diocese by the Holy Assembly of Bishops in 1925.

In 1927 Bishop Mardary organized under the laws of Illinois a not-for-profit corporation named the Serbian Eastern Orthodox Diocese Council for the United States and Canada. The purpose of this corporation was to hold title to 30 acres of property in Libertyville, Illinois, which the bishop had purchased in 1924. The charter of this corporation was permitted to lapse, and, shortly before Bishop Mardary's death in 1935, the American-Ca-

nadian Diocese was incorporated pursuant to provisions of the Illinois Religious Corporation Act (Ill. Rev. Stat. 1973, ch. 32, pars. 176 through 188) under the name of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

Acting under his authority as diocesan bishop, Bishop Mardary called the First Church National Assembly meeting, also known as a Sabor, for September 1, 1927. The invitation to this assembly was sent to all of the known Serbian Orthodox churches in the United States and Canada with the stated purpose of uniting them under one constitution. At the assembly meeting the constitution of the Serbian Orthodox Diocese for the United States of America and Canada was drafted and adopted.

Article I of the constitution provides that the American-Canadian Diocese "is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia." Article 3 states that "the jurisdiction of the Serbian Orthodox Diocese *** includes the entire political territory of the United States of America and Canada, which as such *by its geographical location enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficiaries, through its organs*, but in accordance with the laws of the constitution and in agreement with the laws of the United States [of America] and Canada." (Emphasis added.) Other pertinent provisions of the constitution provide that the bishop of the American-Canadian Diocese is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate (article 9). When the seat of the diocesan bishop is vacated, the administration of the Diocese in spiritual and administrative matters is upheld by the Diocesan Ecclesiastical Court and the Diocesan Council until the appointment of an administrator by the Serbian Patriarch (article 13). The Diocesan National Assembly is the highest legislative and administrative authority of the American-Canadian Diocese with its executive and administrative organ being the Diocesan Council (article 5). The Diocesan National Assembly, which meets every third year in the month of September or on a day designated by the diocesan bishop (article 20), is composed basically of two delegates from every Serbian church-school congregation, all Serbian clergy, the diocesan bishop and the Diocesan Council (article 16). The diocesan bishop is the president of the Diocesan National Assembly (article 22) and the Diocesan Council (article 30). A function of the Diocesan National Assembly is to decide on changes and amendments to the constitution "with the approval of the Holy Bishops' Assembly of the Serbian Patriarchate." Article 23.

The constitution further provides that the property of the individual church-school congregation belongs exclusively to that congregation with no diocesan rights to it (article 147). All property owned by the American-Canadian Diocese is to serve "exclusively for the purpose designated by the statutes of this [C]onstitution and cannot be used for any other purpose." Article 149.

Following its adoption by the Diocesan National Assembly, the constitution was submitted for approval to the Holy Assembly of Bishops of the Serbian Orthodox Church. In 1928 the Holy Assembly approved the "autonomous administration" of the American-Canadian Diocese, but struck an initial provision which provided that the Diocesan National Assembly would elect its own bishop. It inserted the present article 9, which provides that the Holy Assembly appoints the diocesan bishop. The Holy Assembly also insisted that, as a condition for approval, all amendments

to the constitution initiated only by the Diocesan National Assembly would require the approval of the Holy Assembly. The diocesan constitution, as then approved by the Holy Assembly of Bishops, remains, in substance, in force and effect today. It is undisputed that the Diocese thereby became the only diocese in the Serbian Orthodox Church with its own constitution.

In 1945, the property located in Libertyville, which had come to be called the St. Sava Monastery, was transferred to an Illinois not-for-profit corporation organized under the name of the Serbian Orthodox Monastery of St. Sava (monastery corporation). The bylaws of this corporation provide that it is an autonomous Serbian Church institution, and that it "possesses its own property which cannot be disposed of, sold, mortgaged or otherwise conveyed by any Serbian Church authority, without the consent and approval of the Diocesan Council, headed by the Bishop and the Diocesan Church convention." (Bylaw 2.) They further provide that the president of the Board of Directors is the canonical bishop of the Diocese "received as such by the Diocesan Council *** Church Court and *** Convention." (Bylaw 6.) In addition to the monastery corporation, two other not-for-profit corporations organized under the respective laws of California and Pennsylvania hold title to large parcels of property located in these two States.

The Serbian Orthodox Church with its See in Belgrade, Yugoslavia, is one of the 14 autocephalous churches resulting from the great schism in 1054 when the universal Christian church was divided into the churches of the west (the Roman Catholic Church) and the churches of the east (the Orthodox Church). In 1931 the Serbian Orthodox Church adopted a constitution which was substantially revised in 1947 due to changes in its relationship with the

communist government of Yugoslavia. Subsequent amendments to the revised constitution are not pertinent to this controversy except for the amendment of May 10, 1963.

The Serbian Orthodox Constitution provides, in pertinent part, that the Serbian Orthodox Church is autocephalous and governs and regulates independently all of its religious affairs, and that it maintains dogmatic and canonical unity with all other Orthodox churches (article 1). The church has the rank of Patriarchate (article 2). Article 10 states that in the Serbian Orthodox Church there are six levels of church hierarchical and administrative authorities, bodies and organs. The highest two levels are relevant here. The first level consists of the Patriarch, Holy Bishop's Council and Holy Synod, High Ecclesiastical Court, Patriarchal Council and Patriarch[al] Board. The second level consists of the diocesan bishop, diocesan ecclesiastical court, diocesan council and executive board. Article 12 states that the Serbian Orthodox Church is episcopal, with its main administrative division composed of dioceses, both in respect to church hierarch[ic]al and church administrative aspects. Article 14 lists 24 dioceses which are "the dioceses in the Serbian Orthodox Church." Article 15 then provides that in addition to those dioceses already mentioned there are, "under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect," dioceses outside the country. Among those listed is "The Serbian Orthodox Church in the United States of America and Canada, with its seat in Chicago or in the monastery of St. Sava, at Libertyville, Illinois." Article 16 states that "(d)ecisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses *** are decided upon by the Holy Council of Bishops, in agreement with the Patriarchal Council."

The church's governing functions are divided among three entities. The Holy Assembly of Bishops, also referred to as the Holy Bishop's Council, meets once a year and is the legislative body composed of the bishops of the various dioceses (articles 57, 69). The Holy Synod of Bishops is the executive body composed of four bishops and the Patriarch (articles 59, 70). The Patriarch, who is the presiding officer of both the Holy Assembly and the Holy Synod, is also a bishop and is considered the "first among equals."

The Supreme Ecclesiastical Court supervises the judicial authority of the church (article 7). However, special judicial authority is vested in the Holy Synod and the Holy Assembly for particular cases. Articles 57, 59.

In 1961 the Serbian Orthodox Church adopted a revised penal code for Ecclesiastical Courts which detailed the offenses, procedures and punishments of the church. The provisions of this code relevant to the issues raised on appeal will be discussed as they are pertinent.

Bishop Dionisije Milivojevich was elected Bishop of the American-Canadian Diocese in 1939 by the Holy Assembly of Bishops. As early as 1951 Bishop Dionisije requested the Patriarch and the Holy Assembly of Bishops to appoint assistant or vicar bishops to the American-Canadian Diocese. The Diocese, with its church-school congregations, was expanding, and Bishop Dionisije believed that the geographical boundaries of the Diocese should be increased by the addition of South America. These requests and similar requests continued until 1960, when the Diocesan National Assembly formed the opinion that the Diocese should be elevated to the rank of Metropolia and that two or three vicar bishops should be appointed under Bishop Dionisije. In the spring of 1962 a delegation from the Diocese was sent to the Patriarchate to discuss this matter, and on June 12, 1962, the Holy Assembly of Bishops directed the Holy

Synod to appoint a delegation to visit the United States and study the proposals. Bishop Dionisije made it quite clear in a letter to the Patriarch on July 30, 1962, that he was opposed to any reorganization of the Diocese into several dioceses as had previously been suggested. Bishop Dionisije expressed doubt that the people of the Diocese would accept such a division.

Tangential to the issue of the reorganization of the Diocese was a second issue—the charges and accusations against Bishop Dionisije for personal misconduct. As early as his appointment as diocesan bishop, and throughout his administration, letters were written to the Holy Synod challenging Bishop Dionisije's fitness to serve as bishop and control the Diocese. Consequently, the delegation appointed in June, 1962, by the Holy Synod was also instructed to make a study of the charges and accusations against Bishop Dionisije.

The delegation arrived in September, 1962, and visited throughout the Diocese for approximately three months. Among its pertinent recommendations, the delegation advised the Holy Synod that vicar bishops should be assigned to the American-Canadian Diocese and that a commission should be appointed to investigate the accusations against Bishop Dionisije.

On May 10, 1963, the Holy Assembly of Bishops met and at its morning session considered the complaints against Bishop Dionisije that had been sent to the Holy Synod and those that had been brought back by the 1962 delegation. It recommended that the Holy Synod initiate disciplinary proceedings against Bishop Dionisije. The Holy Assembly then recessed its meeting while the Holy Synod met, suspended Bishop Dionisije and appointed Bishop Firmilian, who held the rank of Arch[i]mandrite, as administrator of the American-Canadian Diocese. The Holy

Assembly then resumed its meeting and, purporting to act upon the basis of article 16, amended the constitution of the Serbian Orthodox Church by deleting mention of the American-Canadian Diocese from article 15. In substitution, the Holy Assembly added articles 15—1 to 15—3, which attempted to establish in the territory of the American-Canadian Diocese three new dioceses: the Middle Western, the Western and the Middle Eastern. Bishop Dionisije, still under suspension, was transferred to the Middle Western Diocese. Seven days after this reorganization, the Holy Synod appointed as temporary administrators for the respective new dioceses Arch[i]mandrites Firmilian, Gregory and Stefan.

Upon learning of the Holy Assembly's action, Bishop Dionisije refused to accept the division of the Diocese, since the reorganization purportedly disregarded the autonomy provided for in the diocesan constitution and the action was taken without the agreement of the people of the Diocese. He also refused to accept his suspension, claiming that he was not given a prior hearing as required by the constitution of the Serbian Orthodox Church or the church's penal code. The Diocesan Council informed the Holy Synod on June 9, 1963, that the rejection or acceptance of this division would be decided by the Diocesan National Assembly which was originally scheduled to meet in October, 1963, but which would now meet in early August to consider this question. The Diocesan Council also petitioned the Holy Synod to send a committee to investigate the charges against Bishop Dionisije as soon as possible, since no changes would be made in the administration of the Diocese prior to the Diocesan National Assembly meeting.

The Holy Synod appointed a commission to investigate the charges against Bishop Dionisije on June 13, 1963. The commission met with Bishop Dionisije on July 5, 1963, at which time the bishop repeated his refusal to recognize the division of the American-Canadian Diocese or his suspension, and demanded written copies of all the charges against him. The commission, which had all the written charges in its possession, refused to show the bishop the charges on the basis that his refusal to accept the decisions of the higher church authorities was sufficient to establish his wrongful conduct without the need to investigate the personal charges against him. Prior to the meeting with Bishop Dionisije, the commission had made no investigation of any of the charges. Following this meeting, according to the testimony of one member of the commission, no investigation was conducted, while another member stated that the commission did receive further charges and spoke with some accusers. On July 6, 1963, the commission issued a proclamation which, in effect, stated that Bishop Dionisije was guilty of violations meriting the stripping of his episcopal rank and his excommunication from the church. The commission called upon all faithful Serbian people not to recognize the bishop, but rather to subordinate themselves to the administrators appointed by the Holy Synod.

On July 27, 1963, a special session of the Holy Assembly of Bishops met to consider the report given by a member of the investigation commission. The report recited, among other points, that Bishop Dionisije refused to accept the decisions of the Holy Assembly and Holy Synod dividing the one diocese into three, and suspending and removing him from governing the Diocese. It stated Bishop Dionisije would not recognize the court of the Holy Synod, nor would he recognize its judicial competence.

The report recommended that Bishop Dionisije be deposed as diocesan bishop. The Holy Assembly voted to adopt the report and decision of the investigation commission. Bishop Firmilian was then elected bishop of the Middle Western Diocese.

In August, 1963, the emergency session of the Diocesan National Assembly met and issued a resolution refusing to recognize the validity of the decisions of the Holy Assembly and the Holy Synod regarding the division of the American-Canadian Diocese. The National Assembly demanded the revocation of these decisions and adjourned its meeting until November to provide time for the Holy Assembly to withdraw its decisions. The Holy Assembly refused to reconsider, and in November the Diocesan National Assembly declared the American-Canadian Diocese completely autonomous and, as such, refused to comply with orders issued by the Holy Assembly. Moreover, the National Assembly reinstated those provisions of the diocesan constitution allowing the diocese to elect its own bishop and amend its constitution without prior approval of the Holy Assembly.

During September, 1963, the Holy Synod appointed a prosecutor to draft an indictment against Bishop Dionisije based upon the charges received by the Holy Synod and the investigation commission. The indictment was sent to the bishop, and in November he wrote to the Holy Synod requesting, under article 67 of the Penal Code, copies of the "enclosures" referred to in the indictment, which were the written complaints and letters from his accusers. The indictment, as evidenced by the enclosures submitted before the trial court, was based, in part, upon unsigned letters and complaints, many of which failed to state the time or place of the alleged offense. Bishop Dionisije also requested a 6-month extension to answer the indictment, because it was extremely long (37 pages) and he was

recuperating from a recent automobile accident. In December, the Holy Synod refused the request to provide the "enclosures" but granted a 30-day extension in which to answer the indictment. Bishop Dionisije returned the indictment in January, 1964, stating that he could not answer the indictment without the "enclosures," that the Holy Synod and the Holy Assembly were violating the church penal code and constitution, that no investigation had been made, and that he could not bring his witnesses to Belgrade for trial.

On March 5, 1964, the indictment was verbally amended by the prosecutor before the Holy Assembly to include the alleged offenses Bishop Dionisije had committed since the indictment was drafted. These alleged offenses were his joining with the Diocesan National Assembly to declare the American-Canadian Diocese completely autonomous and to set up a hierarchy outside of the Serbian Orthodox Church by the election and consecration of a diocesan-chosen bishop. By the Holy Assembly's decision, a copy of the amended indictment was not forwarded to Bishop Dionisije on the basis that he had refused to answer the first indictment. Bishop Dionisije also was not informed of this meeting. The Holy Assembly considered the original indictment and the amended indictment and found Bishop Dionisije guilty of all charges. He was divested of his episcopal and monastic ranks and returned to the status of a layman. Among those who voted on the question of Bishop Dionisije's guilt were bishops who had been either members of the 1962 delegation to the American-Canadian Diocese, which had received charges against Bishop Dionisije, or members of the 1963 investigation commission. The bishop who had been appointed prosecutor and who had drafted the indictment also took part in the vote.

The Holy Assembly at this time also declared the meeting of the Diocesan National Assembly in August and November, 1963, illegal, since it was presided over by the deposed Bishop Dionisije contrary to the constitution of the American-Canadian Diocese. It proclaimed that all decisions made by the National Assembly were unlawful and unconstitutional.

On remand of this case (72 Ill. App. 2d 444) to the trial court for a hearing on the merits, testimony was presented as to the correctness of the proceedings against Bishop Dionisije under the constitution and the penal code of the Serbian Orthodox Church.

Bishop Visarion Kostich, a member of the 1963 investigation commission and the author of the penal code, testified that in 1963 the constitution of the Serbian Orthodox Church provided that canonical offenses of a bishop were to be judged by the Holy Synod as the court of "first instance" (article 70). Under article 69 the Holy Assembly of Bishops was to review appeals from the decisions of the Holy Synod, and it was the court of "second instance" in the case of a bishop. He stated, however, that though the constitution was in full force and effect in 1963, the provisions of article 70 were never applied. Moreover, he asserted that the Holy Assembly can take upon itself the privilege of adjudicating a case. Articles 69 and 70 have been amended since the proceedings against Bishop Dionisije to provide that canonical offenses of a bishop are judged by the Holy Assembly.

Bishop Visarion testified that the meeting of the Holy Assembly on July 27, 1963, did not consider the guilt or the charges against Bishop Dionisije. Rather, it considered whether Bishop Dionisije had violated his episcopal oath, which was interpreted as a condition required for a dio-

cesan bishop under article 104 of the Serbian Orthodox Constitution. Bishop Visarion stated that no canonical verdict was rendered against Bishop Dionisije by the Holy Assembly, but a decision was made to relieve him of duties under article 111 of the constitution. Article 111 provides for removal of a diocesan bishop only by canonical verdict or for release upon proof of the loss of a condition under article 104. Bishop Visarion admitted that contrary to article 67 of the penal code no charges had been served on Bishop Dionisije prior to the July 27, 1963, meeting of the Holy Assembly. He stated that though the penal code requires that charges against an accused specify the time, place and manner of offense, certain allegations in the indictment against Bishop Dionisije failed to meet this requirement. The Holy Assembly, however, found that from the formal respects everything was in order, and that determination, Bishop Visarion maintained, was the Holy Assembly's right.

Bishop Visarion was recalled as a witness just over one year after his initial testimony in this case. At that time he testified that canonical offenses of a bishop are not judged in the first instance by the Holy Synod and that there is no provision in the constitution so requiring. He stated that the Holy Synod merely investigates the matter, examines the complaint, the indictment and the reply, and forwards the matter to the Holy Assembly. Bishop Visarion testified that article 65 of the penal code pertains to due process in penal matters, and it provides that unsigned submissions "shall not in any case be taken into consideration or process." He explained that this does not prohibit unsigned complaints from being considered by the investigators, but refers solely to documents submitted in court. He interpreted the penal code as not requiring that

the complaints or documents identified in the indictment be forwarded to the accused, but as requiring that only the text of the indictment need be sent. Bishop Visarion further stated that Bishop Dionisije was not notified of or invited to the March 5, 1964, meeting of the Holy Assembly at which he was defrocked, nor was he served with a copy of the amended indictment upon which the Holy Assembly voted. He asserted that nothing was improper by this action since Bishop Dionisije had placed himself outside the church by refusing to take part in the proceedings. Bishop Visarion, who participated in the Holy Assembly meeting and signed the judgment against Bishop Dionisije, was of the opinion that it was not improper for a person to vote on the judgment though that person had participated in the investigation or was personally interested in the matter.

Father John Meyendorff, a priest of the Russian Orthodox Church and a professor of patristics and church history, testified for plaintiffs as an expert witness on ecclesiastical law and procedure. He stated that he examined the constitution of the Serbian Orthodox Church and the constitution of the American-Canadian Diocese, and studied the orders and decision of the Holy Assembly in 1963 respecting the suspension, deposition and defrockment of Bishop Dionisije. In his opinion Bishop Dionisije was properly suspended, deposed and defrocked. He was aware that the bishop who prepared the indictment against Bishop Dionisije participated in the March, 1964, meeting of the Holy Assembly at which Bishop Dionisije was defrocked. He stated, however, this made no difference in his opinion, because he knew of no church rule which prohibited this. In his view, the bishop had a duty to vote on an issue of such importance.

On cross-examination he testified that in forming his opinion he assumed the action against Bishop Dionisije was taken by men of good spirit under the rules of the Serbian Orthodox Church. He stated that having read the indictment against Bishop Dionisije he assumed the charges, by and large, were true, and that this assumption was part of the basis for his opinion. He further stated that a very important element in forming his opinion was the consensus among the Orthodox churches and bishops that the suspension, deposition and defrockment of Bishop Dionisije were valid. A suspension, he related, was a temporary measure of general practice under canon law when a person is called for trial. Father Meyendorff admitted he had not read and was not familiar with the penal code of the Serbian Orthodox Church. In giving his opinion he did not consider whether or not the proceedings against Bishop Dionisije complied with the penal code. Having familiarized himself with the exhibits, he stated that his impression was that the procedures were correct. He further testified that procedural rules are obligatory on the body which issued and applied them.

During cross-examination Father Meyendorff was asked to read a plaintiffs' exhibit which was a translation of an excerpt of the minutes of the meeting of the Holy Assembly on July 27, 1963, when Bishop Dionisije was deposed. In regard to this exhibit, which he referred to as relating to the deposition of Bishop Dionisije, he stated the text definitely implied that the action against Bishop Dionisije was an ecclesiastical punishment or reprimand, though the text did not defrock or impose a penance on him. The exhibit indicated that the Holy Assembly sat in judgment of Bishop Dionisije and removed him as diocesan bishop for cause.

Father Meyendorff stated that a bishop is the defender and advocate of religious and doctrinal matters in the diocese. He testified that there were instances in Orthodox Church history where a bishop severed ties with the Orthodox Church in defense of his diocese. As an example of this, Father Meyendorff referred to his own church, the Russian Orthodox Church in America, which broke ties with the Patriarch of Moscow.

On redirect examination, Father Meyendorff stated that he had an opportunity during a recess in the trial to read two paragraphs of the penal code referred to in the deposition of Bishop Dionisije. While the record is unclear, the two paragraphs were apparently article 67, which deals with due process, and article 90, which covers the jurisdiction of the Holy Assembly and the Holy Synod in cases involving a bishop. Father Meyendorff testified that having read these paragraphs he still maintained that the proceedings against Bishop Dionisije were proper.

Father Zivan Stefanovic, who served as referent in legal matters to the Holy Synod from 1952 until 1965, and was editor of the *Herald,* an official journal of the Serbian Orthodox Church, from 1955 until 1965, was recognized by the court as an expert in the interpretation of the penal code. Father Stefanovic testified that in cases involving bishops the constitution envisioned the Holy Synod as the court of first instance and the Holy Assembly as the court of second instance. He referred to articles 70.35 and 69.27B of the constitution, which provide for these respective courts. Article 63 of the penal code provides for the judgment of a bishop and repeats, in substance, the regulations of the constitution. He stated that article 63 requires the court of first instance to make a decision in the case under consideration. Article 64 of the penal code provides that

the court which had jurisdiction for starting a procedure retains jurisdiction until the end of the procedure. He further stated that under article 69.27 of the constitution and article 78 of the penal code judgments of the court of first instance are appealable to the court of second instance. Father Stefanovic testified that under articles 77 and 124 of the constitution and articles 82.2 and 82.3 of the penal code certain members are prohibited from participating in the judgment of a case when the Holy Synod acts as a court. The same articles apply to the Holy Assembly when it acts as a court. These articles refer to persons who participated in the investigation, were personally interested or were disqualified from the deliberations.

Father Stefanovic said that article 67 of the penal code provides an accused with the right to receive the complaints against him. He testified that during 1963 and 1964 the Serbian Orthodox Church was in the practice of providing copies of the complaints to the accused under this article. During the 30 years he was involved in court proceedings, there was never an occasion when an accused was not provided with the written complaints to which he could reply. Father Stefanovic asserted that under article 67 of the penal code the proper procedure for conducting an investigation requires the investigator to set up a time and place for the accused and witnesses to appear before him at a hearing. The witnesses are called individually to explain what they saw, heard or experienced, and the accused is then given an opportunity, through the investigator, to request further explanation. Unsigned complaints, he stated, cannot even be given to the investigator under article 65 of the penal code.

Father Stefanovic testified he knew of no case in the Serbian Orthodox Church where a bishop was removed

from a diocese without his consent or agreement. He stated that under article 217 of the constitution a clergyman or bishop can be transferred into another parish or diocese only after the judgment of a church court, and under article 111 a bishop can be removed only by canonical verdict resulting from a trial by the Holy Synod in the first instance. He stated further that articles 216 and 217 of the constitution and article 55 of the penal code provide penalties for offenses of a serious nature, which include transfer to another place of service, and loss of a place of service for those who are not parish priests. Under article 218 of the constitution and the third paragraph of article 67 of the penal code, no one can incur any church penalty without a prior hearing. Father Stefanovic said that article 71 of the penal code mandates the steps the Holy Synod must take when it acts as a court. It must consider all documents and, on the basis thereof, vote first on the issue of guilt and, finally, on the question of punishment.

During his testimony Father Stefanovic related his contact with the proceedings against Bishop Dionisije. Among these incidents, he stated he was called by the Holy Synod on December 10, 1963, along with a theology professor to give an expert opinion as to the offenses of Bishop Dionisije. He was asked whether the written complaints should be furnished to Bishop Dionisije as he had requested. Father Stefanovic told the Holy Synod that the written complaints should be furnished, since the penal code and the practice in previous years dictated it. Following this occurrence, Father Stefanovic had no further contact with the proceedings until March, 1964, when he was told the decision of the Holy Assembly and was assigned to draft the formal judgment.

Father Stefanovic gave his opinion as to the proceedings against Bishop Dionisije. He stated that under the Serbian Orthodox Constitution and the penal code the Holy Assembly could not transfer Bishop Dionisije to a newly created diocese without a previous hearing, investigation and judgment brought by the Holy Synod. The process of the investigation commission did not conform with the law of procedure, since the commission did not hold a hearing of witnesses or collect proof of the charges. The accusations and allegations against Bishop Dionisije were taken as evidence when, in fact, these complaints had to be proved. Moreover, Bishop Dionisije was not given an opportunity to answer all the accusations, nor did he receive proof of the charges which were used to describe his offenses and upon which the judgment was based. Father Stefanovic maintained that Bishop Dionisije could not be deposed from his diocese before the Holy Synod entered judgment that his transgressions were proved and that he was to be punished by deposition. Bishop Dionisije was not furnished with a copy of the amended indictment, which contained the most serious offenses, before it was submitted to the Holy Assembly. Father Stefanovic stated that even assuming the Holy Assembly was competent to judge Bishop Dionisije in the first instance, it should not have considered the amended indictment, since the prosecution did not follow the prescribed procedure. It was noted that the indictment itself provided on the first page that the Holy Synod was authorized under the constitution and the penal code of the Serbian Orthodox Church to judge in the first instance the case of Bishop Dionisije. Father Stefanovic concluded that the defrockment was improper because the Holy Assembly acted as the court of first instance in violation of article 70.35 of the Serbian Orthodox Constitution, and by this procedural violation Bishop Dionisije was precluded from having a court of second instance to which to appeal.

On cross-examination, in an apparent attempt to discredit Father Stefanovic's credibility, plaintiffs brought out that he was the subject of disciplinary proceedings by the Serbian Orthodox Church following his departure from Yugoslavia in 1965. During his cross-examination on the penal code, Father Stefanovic made reference apparently to article 66, which provides, basically, that if a person charged with a violation refuses to participate in the proceedings, then it is considered that he acknowledges the charges against him and due process will be concluded without his participation.

Numerous persons testified at trial who purportedly had witnessed or accused Bishop Dionisije of personal misconduct. These persons had all been named in the indictment or the enclosures to it. While it is unnecessary to relate the content of this testimony, since the trial court did not base its decision on the alleged personal transgressions of Bishop Dionisije, we note that the majority of these witnesses testified that they had no knowledge of any personal misconduct by Bishop Dionisije, had not made any accusations against the bishop, and had never been interviewed by the 1963 investigation commission. Between this majority and the minority who did testify as to personal misconduct by Bishop Dionisije, there were factual disputes as to the occurrence of the alleged specific incidents. Certain members of this minority group admitted that some accusations they had made were not based on personal knowledge, but on information they had received from other people. Some members of this minority were clergy, and they admitted that they had previously been disciplined by Bishop Dionisije. And, finally, certain members conceded that they had never been interviewed by the 1963 investigation commission.

Three primary issues are raised in this appeal. Bishop Dionisije challenges the validity of his transfer, deposition and defrockment. Secondly, plaintiffs contend that the Holy Assembly of Bishops had the power to reorganize the American-Canadian Diocese into three new dioceses. And, finally, the American-Canadian Diocese and the monastery corporation, defendants herein, argue that the relationship between the Serbian Orthodox Church and the Diocese has been terminated by either the attempted reorganization of the Diocese by the Holy Assembly of Bishops or by the November, 1963, resolutions of the Diocesan National Assembly. Antecedent to the first issue, and less specifically to the remaining issues, is the question whether the decision of the highest church authority can be reviewed by the civil courts.

Plaintiffs argue and defendant Bishop Dionisije does not dispute that the Serbian Orthodox Church is a hierarchical and episcopal church. Moreover, the parties agree that in cases involving hierarchical churches the decisions of the proper church tribunals on questions of discipline, faith or ecclesiastical rule, though affecting civil rights, are accepted as conclusive in disputes before the civil courts. (See *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679, 727, 20 L. Ed. 666, 676; *Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16, 74 L. Ed. 131, 137, 50 S. Ct. 5.) All parties maintain that the sole limitation on this rule, when civil courts may entertain the "narrowest kind of review," occurs when the decision of the church tribunal is claimed to have resulted from fraud, collusion or arbitrariness. (*Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16, 74 L. Ed. 131, 137, 50 S. Ct. 5; *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 447, 451, 21 L. Ed. 2d 658, 664, 89 S. Ct. 601.) Plaintiffs assert that they are un-

able to cite any case wherein a court has interjected itself into a dispute on this basis. And plaintiffs urge that the trial court was correct in its finding that Bishop Dionisije failed to prove that his suspension, transfer, deposition and defrockment resulted from fraud, collusion or arbitrariness.

Having reviewed the record, we find that Bishop Visarion's testimony as to the correct procedure for trial of a bishop was contradictory, and Father Meyendorff's opinion in regard to Bishop Dionisije's deposition and defrockment was premised upon an assumption which did not consider the penal code. Conversely, Father Stefanovic, who served as legal referent to the Holy Synod and was obviously viewed by it as a legal expert, stated that Bishop Dionisije's transfer, deposition and defrockment were in violation of the constitution and the penal code of the Serbian Orthodox Church.

We note that while Bishop Visarion viewed the Holy Assembly's action on July 27, 1963, as a "release" of Bishop Dionisije under article 111 of the constitution and not as a removal, other witnesses were not in accord. Father Meyendorff, a witness called by the plaintiffs, referred to the Holy Assembly's action as the deposition of Bishop Dionisije and his removal from his duties in the American-Canadian Diocese. Father Stefanovic also viewed the action as a removal from the Diocese. Moreover, plaintiffs argue in their brief that the action was a proper "removal" under the constitution and the penal code of the Serbian Orthodox Church.

Article 66 of the penal code provides that if a person charged with a violation refuses to participate, due process will be concluded without his participation. The application of this provision, however, must be viewed from the perspective that Bishop Dionisije refused to participate because he maintained that the proceedings against him were in violation of the constitution and the penal code of the Serbian Orthodox Church.

In determining the issue before us, this court has limited itself to the "narrowest kind of review," to what Justice Frankfurter referred to as "one aspect of the duty of courts to enforce the rights of members in an association, temporal or religious, according to the laws of that association." (*Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94, 122, 97 L. Ed. 120, 139, 140, 73 S. Ct. 143 (concurring opinion).) Similarly, this court recognized in *Schweiker* v. *Husser*, 146 Ill. 399, 415, 425, that the decisions of the highest church authority properly within the sphere of ecclesiastical matters are not binding upon civil courts if "they are clearly and manifestly repugnant to the established laws" of the church authority, or "in clear and palpable excess of its own jurisdiction * * *." Though this rule was expressed in *Schweiker* decades before the decision in either *Gonzalez* v. *Roman Catholic Archbishop*, 280 U.S. 1, 16, 74 L. Ed. 131, 137, 50 S. Ct. 5, or *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 447, 451, 21 L. Ed. 2d 658, 664, 89 S. Ct. 601, it is consistent with the limitation on judicial review enunciated by the United States Supreme Court in these later cases.

A detailed review of the evidence discloses that the proceedings resulting in Bishop Dionisije's removal and defrockment were not in accordance with the prescribed procedure of the constitution and the penal code of the

Serbian Orthodox Church. While plaintiffs have argued that the evidence demonstrated Bishop Dionsijie's defiant and dissident attitude toward the Serbian Orthodox Church, this, nevertheless, is not a factor in determining whether the prescribed church procedures were followed in the proceedings against him. Accordingly, the trial court's finding that Bishop Dionisije's removal and defrockment were not the result of arbitrariness must be set aside as contrary to the manifest weight of the evidence. The question of Bishop Dionisije's suspension under church procedure has not been challenged, and there is no evidence of impropriety in regard to it. Thus, the trial court's finding in this matter will not be disturbed. *We note, however, that article 19 of the Serbian Orthodox constitution provides for suspension until the verdict of the church court is rendered, and "the court is obligated to make a decision within a period of one year." Since no valid action to resolve this matter was effected by church authorities within this period, it would appear from the language of article 219 and the testimony of Father Meyendorf[f], previously set forth in relation thereto, that the suspension of Bishop Dionisije is not presently effective.* Moreover, because Bishop Dionisije's removal and defrockment were in violation of church procedure, consideration of the remaining charges need not be undertaken.

Plaintiffs maintain that the reorganization of the American-Canadian Diocese into three new dioceses was authorized by the constitutions of both the Serbian Orthodox Church and the American-Canadian Diocese. Plaintiffs' contention, however, rests upon the premise that the American-Canadian Diocese is no different from any other diocese over which the Serbian Orthodox Church

has complete authority. The issue involved here was considered and resolved adversely to plaintiffs in both the appellate court and the trial court on remand. The appellate court opinion, which was based solely upon the pleadings, depositions and affidavits, properly disposed of this issue. 72 Ill. App. 2d 444, 458-59.

As recognized in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666, 670, the United States Supreme Court stated:

> "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, and of the extent to which it has agitated the intelligent and pious body of Christians in whose bosom it originated, we enter upon its consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us."

While the constitutions of the American-Canadian Diocese and the Serbian Orthodox Church deal primarily with religious matters, they do contain clear and specific provisions concerning the relationship between the Diocese and the Serbian Orthodox Church as regards administrative autonomy. A consideration of these constitutions in regard to the "full administrative freedom" enjoyed by the Diocese does not in any way entangle this court in the determination of theological or doctrinal matters. (See *Maryland and Virginia Eldership of the Churches of God*

v. *Church of God,* 254 Md. 162, 254 A.2d 162, *appeal dismissed,* 396 U.S. 367, 24 L. Ed. 2d 582, 90 S. Ct. 499.) The determination of this issue is made without the resolution of doctrinal questions and without extensive inquiry into religious polity. The fact that the provisions of the constitutions pertinent to this issue are interspersed with other provisions relating to religious rites and doctrines does not preclude judicial review. It is doubtful that there are many church constitutions, charters or documents concerning the relationship and rights between two religious bodies that cannot be said to contain provisions relating to religious rites or doctrines. Therefore, to hold that review is precluded would leave the principle expounded in *Gonzalez* and *Mary Elizabeth Blue Hull* without meaning.

The issue raised here is analogous to the first issue. Bishop Dionisije maintained the proceedings against him were not in accord with the requirements of the constitution and the penal code of the Serbian Orthodox Church. Here, the American-Canadian Diocese maintains the reorganization was in violation of the constitutions of the Diocese and the Serbian Orthodox Church. The determination of this issue, as with the first issue, is merely the enforcement of "the rights of members in an association * * * according to the laws of that association." *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church in America,* 344 U.S. 94, 122, 97 L. Ed. 1120, 140 [*sic*], 73 St. Ct. 143 (Frankfurther [*sic*], J., concurring opinion).

The early history of the Serbian Orthodox churches in America and of the American-Canadian Diocese itself manifested a clear intention to retain independence and autonomy in its administrative affairs while at the same time becoming ecclesiastically and judicially an organic

part of the Serbian Orthodox Church. The constitution of the Diocese evidences and accomplishes this intent. Article 2 [*sic*] states that the Diocese is considered "ecclesistically-judicially as an organic part" of the Serbian Patriarchate. The article recites no reference to administrative control by the Patriarchate, and, in point, article 3 provides that the Diocese "enjoys full administrative freedom" and can "independently regulate and rule" the activities of the church within the "entire political territory of the United States and Canada.

The desire for administrative freedom is further indicated by the fact that initial provisions of the diocesan constitution, which the Holy Assembly would not accept as a condition for approval, provided that the Diocesan National Assembly would elect its own bishop and have the exclusive right to amend the constitution. The Diocese did not surrender its complete power in regard to this latter provision, for the Holy Assembly may only approve changes introduced and adopted by the Diocesan National Assembly. We conclude, as did the appellate court, that it is inconceivable that the Holy Assembly, which is without an express power to alter or amend the diocesan constitution, has an implied power to utterly revoke that constitution by decreeing that the Diocese ceases to exist.

The constitution of the Serbian Orthodox Church, adopted three years after the constitution of the American-Canadian Diocese was approved, is not contrary to this conclusion. Article 12 states that the church's main administrative division is the diocese in regard to both church *hierarchical* and *administrative* aspects. Article 14 states, "These are the Dioceses in the Serbian Orthodox Church," and then lists only those dioceses within Yugoslavia. The American-Canadian Diocese, prior to May 10, 1963, was

listed in article 15, which, significantly, covered those dioceses "under the jurisdiction of the Serbian Orthodox Church in *spiritual* and *hierarchical* aspect." These two articles clearly distinguish between those dioceses completely subordinate to the Serbian Orthodox Church in both hierarchical and administrative matters and those dioceses subordinate in only the spiritual and hierarchical aspects. By the placement of the American-Canadian Diocese in article 15, the Serbian Orthodox Church recognized, in its own constitution, its jurisdiction over the Diocese only in spiritual and hierarchical concerns. Article 16 states that decisions regarding the establishment, liquidation, or reorganization of the dioceses are decided upon by the Holy Assembly in agreement with the Patriarchal Council. Plaintiffs have pointed to no statement or interpretation of article 16 by the Holy Synod, Holy Assembly, or the Patriarch that a liquidation or reorganization of a diocese is other than an administrative act, nor have we been able to find any. Defendants maintain that the "reorganization" of the Diocese was administrative, and plaintiffs contend, in a rather oblique argument, that it was both hierarchical and administrative. Even accepting plaintiffs' contention, the constitution of the Serbian Orthodox Church does not grant the Holy Assembly the sole power to "reorganize" the American-Canadian Diocese, and in this regard it is consistent with the constitution of the Diocese. For the above-stated reasons, we find that the division of the American-Canadian Diocese into three new dioceses by the Holy Assembly was "in clear and palpable excess of its own jurisdiction," and as such, it is not binding on civil courts. *Schweiker* v. *Husser*, 146 Ill. 399, 415, 425.

The American-Canadian Diocese and the monastery corporation maintain that the relationship between the

Diocese and the Serbian Orthodox Church has been terminated by reason of the church's breach of the contract between them or by reason of the parties' mutual repudiation. Plaintiffs assert that no contract ever existed, that the Diocesan National Assembly which proclaimed the Diocese completely autonomous was constitutionally illegal, and that the Diocese's attempt to proclaim its complete autonomy was violative of the constitutions of both the American-Canadian Diocese and the Serbian Orthodox Church. Defendants do not contend that the constitution of the Serbian Orthodox Church provides any authority under which the Diocese could proclaim autonomy. Moreover, the constitution of the Diocese states that any amendments adopted by the Diocesan National Assembly must be approved by the Holy Assembly of Bishops.

In considering this issue, a determination must first be made as to what is the actual relationship between the American-Canadian Diocese and the Serbian Orthodox Church. Reviewing the history of the Diocese, as disclosed by the record and the constitutions of the respective parties, we find that the relationship is more than a mere contract or compact. Rather, it is a relationship of religious unanimity wherein people of common faith joined with a recognized higher church organization to further the practice of their faith. The constitutions of the parties are simply the expressions of the temporal laws governing this religious union and are only a minor aspect of it. Actions which are contrary to these temporal laws are not a repudiation or an abrogation of the primary and basic relationship of religious unity.

The attempt of the Diocese to declare its complete autonomy is similar to the attempt of the Holy Assembly

of Bishops to divide the Diocese. Both actions were contrary to their respective constitutions. Neither act, however, was a repudiation of the basic religious unanimity, thereby permitting the parties to abandon their union or to ignore the temporal laws governing their relationship.

Moreover, viewing this issue solely in regard to the respective constitutions, the parties recognize that neither provides for a unilateral withdrawal. As the action of the Holy Assembly in attempting to divide the Diocese was "in clear and palpable excess of its own jurisdiction," so also is the action of the Diocese in attempting to secede. Accordingly, the declaration of complete autonomy by the Diocese is not binding on civil courts. We do not infer, however, that the relationship existing between the American-Canadian Diocese and the Serbian Orthodox Church is the same type of relationship as exists between the Diocese and its respective church-school congregations.

Accordingly, the judgment of the circuit court of Lake County that Bishop Dionisije's deposition and defrockment were proper is reversed; the judgment that the division of the American-Canadian Diocese into three new dioceses was illegal and unenforceable is affirmed; and the judgment that the actions of the Diocesan National Assembly in November, 1963, amending the constitution of the Diocese are without force or effect is affirmed. The cause is remanded to the circuit court of Lake County for further proceedings not inconsistent with the views expressed herein.

Affirmed in part and reversed in part and remanded.

MR. JUSTICE SCHAEFER took no part in the consideration or decision of this case.

APPENDIX B

IN THE
CIRCUIT COURT OF LAKE COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a religious body, et al., Plaintiffs,	No. 63-1644	Consolidated No. 63-1644
vs.		
DIONISIJE MILIVOJEVICH, et al., Defendants.	No. 63-2312	

MEMORANDUM DECISION

PREAMBLE

This cause has a lengthy history which involves a bitter religious and legal controversy and an involved tangle of pleadings and exhibits and scholarly briefs, and an extremely lengthy bench trial with evidence presented before this Trial Judge. We intend to condense this Opinion as all evidence, law of the case and historical background are well known to the parties and counsel to the cause.

The parties named in the caption of this Decision for convenience will herein sometimes be referred to as: The Plaintiffs as "Mother Church" and the Defendants as "American Diocese." The former has its Holy See in Yugoslavia and the latter in or near Libertyville, Lake County, Illinois.

These cases were consolidated at the trial court level and were summarily disposed of by the late Judge Philip

Yager in favor of said Defendants. On appeal by the Mother Church as Appellants, a comprehensive review of the pleadings and supporting documents and the law applicable to the situation appears in the Learned Opinion and Supplemental Opinion written by Appellate Court (now Illinois Supreme Court) Justice Charles Davis, which appears in 72 Ill. App. 2d 444 (1966). In this (the Davis Opinion), the Yager trial court summary judgment orders were reversed.

We quote from the Davis Opinion: (Pages 464 & 465)

> "• • • be presented to the trial court on remandment in an orderly and complete hearing of these consolidated cases on their merits. If, upon proper pleadings, competent testimony and other valid evidence, the appellees can present a case which would warrant and justify the trial court—a civil court—in not accepting a pertinent ecclesiastical decision or decisions, we do not mean to be understood to preclude them from doing so. Our purpose in remanding the case is to afford all of the litigants a complete and full hearing on the merits pertaining to the many issues and questions involved. The factual background of this case is indeed significant, but it is not without dispute, as is evidenced by the numerous conflicting representations made to the court through extensive pleadings, depositions, affidavits, and briefs.
>
> "The legal conclusions reached in our opinion are based upon the facts as they appear to us as the case stands at this juncture. Should a full hearing develop factual matters of significance, different from those upon which this opinion is based, then our opinion would be limited accordingly."

The Appellate Court Decision quoted above has been our reason for the extensive evidence taken by us, chiefly to determine whether or not the decision of the Mother Church

to defrock Bishop Dionisije was "tainted with fraud, collusion, or arbitrariness" in which case, only, the ecclesiastical decision need not be accepted by this secular court. On page 457 of the Davis Opinion we find a reference to the cases of Watson and Gonzalez and the statement that:

> "If a civil right depends upon an ecclesiastical matter, the civil court must take the ecclesiastical decisions as it finds them. It is only where the decision of a church tribunal is tainted with fraud, collusion or arbitrariness that the decision need not be accepted by the secular court."

And on page 456 of the said Davis Opinion again is similar legal authority.

There are two existing corporations with which we are concerned. In 1935, a new religious society was incorporated under the laws of Illinois called "Serbian Eastern Orthodox Diocese for the United States of America and Canada." Its Constitution was substantially the same as that of the first corporation and it was likewise approved by the Serbian Orthodox Church of Yugoslavia. (Previously such society, incorporated in Illinois in 1927, had been allowed to lapse.) As is stated in the last paragraph on page 450 of the Davis Opinion:

> "• • • the Constitution of the Diocese. [the religious corporation] It states that the Diocese 'is considered ecclesiastically—judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia.' Article 2 provides that 'All statutes and rules which regulate the ecclesiastical—canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory' on the Diocese 'with the exception of specific cases which must be formulated with regard to local circumstances in accordance with ecclesiastical and judicial principles.'

"Article 3 of this [Diocesan] Constitution provides that the jurisdiction of this Diocese includes the entire political territory of the United States and Canada, which by its geographical location enjoys 'full administrative freedom' under which 'it can independently regulate and rule the activities of * * *'" (various activities described).

In 1945, said Religious Corporation under the leadership of Bishop Dionisije formed an Illinois Corporation under the general not-for-profit corporate laws to which the assets of the Religious Corporation would be transferred. The name of this Corporation was, and is, "Serbian Orthodox Monastery of Saint Sava." The reason for this move was the Bishop's fear that the Mother Church would fall under the domination of the Communist government in Yugoslavia. The Bylaws of the non-profit corporation formed in 1945 provide for it to be an autonomous Serbian Church institution; and further provide that it possesses its own property which cannot be disposed of, sold, mortgaged or otherwise conveyed by any Serbian Church authority, without the consent and approval of the Diocesan Council, headed by the Bishop and the Diocesan Church Conventions.

On May 10, 1963, the Holy Episcopal Synod of the Mother Church in Yugoslavia first suspended Bishop Dionisije, and then he was defrocked on March 15, 1964 by the Holy Episcopal Council consisting of the Patriarch, Metropolitan, and the Diocesan Bishops of Yugoslavia. In that intervening interval, on May 17, 1963, said Synod of the Mother Church had disbanded the American-Canadian Diocese and in place thereof established three new dioceses, including not only all of the same, but also an additional international territory; and on said date, three temporary

administrators were appointed for said respective new dioceses. Firmilian Ocokoljich on May 10, 1963, was first appointed as Administrator of the Diocese to replace the suspended Bishop Dionisije, then as temporary Administrator of one of the three new dioceses, and next on July 27, 1963, as Diocesan Bishop of one of the three newly created dioceses, and only in this sense, to replace Bishop Dionisije.

We believe we must decide these issues:

NUMBER ONE ISSUE: Was the decision to defrock Bishop Dionisije made by the Mother Church in Yugoslavia tainted with fraud, collusion or arbitrariness so that the decision need not be considered as binding upon this, a secular court?

NUMBER TWO ISSUE: Has any evidence, oral and documentary, of substance been heard by this Court which should induce us to rule contrary to that part of Justice Davis' Opinion (pages 451 & 458) that the Religious Corporation of the American Diocese has "full administrative freedom" and autonomy over its local Constitution, although changes and amendments to the Constitution can only be consummated "with the approval of the Holy Bishops' Assembly of the Serbian Patriarchate"?

NUMBER THREE ISSUE: Has any appropriate evidence been adduced in this Court which persuades us to change or comment upon the Justice Davis Opinion concerning the "trust" aspects of the "Saint Sava" owned property?

NUMBER FOUR ISSUE: Has this Court any viewpoint or comment regarding the opinion of Justice

Davis (pages 458, 459 & 462) declaring the action of the Mother Church in dividing the American Diocese into three new dioceses, with a changing of boundaries and bishops, to be beyond the power of the Serbian Patriarchate in Yugoslavia?

NUMBER FIVE ISSUE: The Davis Supplemental Opinion at page 463 finds that Firmilian was appointed in 1963 by the Holy Episcopal Synod as temporary administrator of the original American-Canadian Diocese in place of Bishop Dionisije (later defrocked); subject, however, to evidence on this trial on remand. What finding does this Court make?

CONTROLLING LEGAL AUTHORITIES

The opposing litigants cite considerable case law in their briefs before this Court, some from the United States Supreme Court and some involving our same litigants in other jurisdictions. However, after our examination of briefs and citations, there still remain two outstanding U.S. Supreme Court cases, viz., commonly known as the "Watson" and "Kedroff" cases which we believe are basic to the general tenor of this opinion as they were to Justice Davis' Opinion in 72 Ill. App. 2d 444. These two cases will now be discussed in relation to our instant cause as will two or three cases decided subsequent to the Davis Opinion in 1966, as well as related matters.

(A) Watson v. Jones, 13 Wall. 679 (1871); 20 L. Ed. 666 is recognized by all (Davis Opinion pages 456 & 457) as the U.S. Supreme Court basic and unchanged general rule relative to civil courts interfering in, or trying to settle, ecclesiastical disputes involving church-held property. At page 674 of Watson (Lawyer's Edition), the Supreme Court grouped such cases in the following manner:

> "The questions which have come before the Civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the State."

(Here, the court first describes conditions found in the deed or will involving the specific property; and second where the individual church which owns the property is congregational in type and strictly independent of any higher church authority. The third class is quoted from Watson as follows):

> "3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization."

Again, in Watson (L. Ed. Page 676):

> "In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

(B) Kedroff, et al. v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94 (1952); 97 L. Ed. 120, affirmed and approved the general findings in Watson and also defined Class Number 3 therein (the hierarchical churches) as those organized as a body with other churches having similar faith and doctrine, with a common ruling convocation or ecclesiastical head. Kedroff held to be violative of the First Amendment to the U.S. Constitution, certain New York State Legislation taking considerable church power from the Holy See in Moscow and granting it to the American-based Orthodox Russian Diocese. Justice Davis on page 456 writes: "We do not believe it can seriously be contended that the American Diocese is not a part of such a Hierarchical structure." In this opinion, this Court concurs.

(C) There are other decisions of Courts of Appeal from various jurisdictions cited in the respective briefs for the parties here. We have given the consideration thought to be due to such citations and we believe only two are sufficiently relevant (especially "Blue Hull").

1. Presbyterian Church, etc., et al. v. Mary Elizabeth Blue Hull, etc., et al., 393 U.S. 440, (89 Sup. Ct. 601) (1969), involved two local churches which belonged to a Presbyterian structure much similar to our Serbian overall Hierarchical structure. Local churches felt that they had sufficient doctrinal and other differences to withdraw from their mother church and the "Blue Hull" case resulted. The trial court and the Georgia Supreme Court both found for the local churches. However, in said "Blue Hull" decision, the U.S. Supreme

Court reversed, citing Watson v. Jones, supra, stating (393 U.S. 604):

> "There, as here, civil courts were asked to resolve a property dispute between a national Presbyterian organization and local churches of that organization. There, as here, the disputes arose out of a controversy over church doctrine. There, as here, the Court was asked to decree the termination of an implied trust because of departures from doctrine by the national organization. The Watson Court refused pointing out that it was wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions."

The "Blue Hull" Court then, in substance, confirmed Watson. The exception so familiar to all by now giving civil courts limited jurisdiction in church matters where it is proven that fraud, collusion or arbitrariness has affected ecclesiastical decision, is affirmed in "Blue Hull" on page 447, but more directly on page 451.

2. The Maryland and Virginia Eldership, etc., et al. v. The Church of God at Sharpsburg, Inc., et al., 396 U.S. 367; 24 L. Ed. 2d 582 (1970), is a one-page per curiam opinion. It is informative solely from a Justice's "Separate Opinion" of about two pages which cites the Watson, Kedroff, and Blue Hull cases, all supra, all with approving comments, but adding little to the law in our Serbian case.

(D) The Statute of Illinois under which the American Diocese was incorporated in 1935 as a religious society has significance to us as the Davis Opinion

relates (pp. 456 & 457) of two methods to incorporate religious societies under the Religious Corporations Act, §§35-46, inclusive, thereof provide for independent organizations. (Ill. Rev. Stats. now 1971, Chap. 32, paragraphs 164 et seq.); and §§46(a)-(k) inclusive. The Diocese in this country was incorporated in 1935 under the provisions of Chap. 32, paragraphs 176-186, inclusive. This fact, together with the constitutional language, church history, and practice, clearly establishes the Hierarchical nature of the Serbian Orthodox Church. (See Davis Opinion, page 457).

DECISION

We now decide the issues as we view them by the same numbers which we have used to outline them previously herein.

NUMBER ONE ISSUE: In our opinion, no substantial evidence was produced by Defendants at the trial that fraud, collusion or arbitrariness existed in any of the actions or decisions preliminary to or during the final proceedings of the decision to defrock Bishop Dionisije made by the highest Hierarchical bodies of the Mother Church. These were valid ecclesiastical matters under the above findings and highest legal authorities. Bishop Dionisije chose not to appear in Belgrade for trial and he had been dissident from the Mother Church for many, many years, even though it may be from originally what he thought and may still think are patriotic reasons. Nevertheless, his attitude was one of defiance of the Holy See which was publicly made manifest and known to a great many of the faithful, he refused to attend meetings of

Bishops in Yugoslavia, even in recent years, and the Mother Church can hardly be blamed for proceeding with his trial in his absence.

Countless charges of personal misconduct were made by Plaintiffs against Bishop Dionisije and a great part of the trial was evidence pro and con by witnesses concerning those matters. This Court permitted this evidence (much of which now seems extraneous) wherein we believe that trial counsel had legal reason in connection with this "Issue Number One." However, we now consider that all this type of evidence was irrelevant to any of our issues stated herein and we make no finding as a Court as to the personal conduct of Bishop Dionisije while a Bishop nor concerning the charges in question.

NUMBER TWO ISSUE: No sufficient evidence was heard during our trial to differ with or to comment upon the Justice Davis Opinion at pages 451 and 458 confirming and holding that the Religious Corporation, "The Serbian Eastern Orthodox Diocese for the United States of America and Canada" has "full administrative freedom" and autonomy over its local Constitution, although changes and Amendments thereto can only be consummated "with the approval of the Holy Bishops' Assembly of the Serbian Patriarchate."

We comment that this does create a rather anomalous situation, with the American Diocese being led by a temporary Administrator and perhaps a bishop appointed by the Mother Church and it also having a "negative vote" on all future Constitution "changes and Amendments."

NUMBER THREE ISSUE: We are not persuaded by the evidence to change or comment significantly upon the opinion of Justice Davis concerning the "trust" aspect of the "Saint Sava" Corporation held property of the Diocese. We agree with his views and for brevity, we simply refer to his Opinion on this subject, beginning in the last paragraph on Page 454 and continuing to the middle of Page 456 of his Opinion.

NUMBER FOUR ISSUE: We concur fully with Justice Davis that it was improper and beyond the power of the Mother Church to take its action in dividing the whole American Diocese into three new Dioceses, changing its boundaries, and in appointing new bishops for said so-called new Dioceses. Again, for brevity, we refer to the Davis Opinion on these matters beginning in the first paragraph on Page 458 and continuing to the first paragraph on Page 460.

NUMBER FIVE ISSUE: We concur with the "Supplemental Opinion" of Justice Davis (second paragraph, Page 464), that Firmilian was validly appointed by the Holy Episcopal Synod as temporary Administrator of the whole American Diocese in place of the defrocked Bishop Dionisije, and we recall no evidence to the contrary during our trial. However, a peculiar situation exists which we do not believe Justice Davis refers to in his Opinion. Firmilian was never designated Bishop of all of the original and still existing "American-Canadian Diocese" by the Holy See in Belgrade and therefore, only an Administrator, not a Bishop, is in charge of the latter Diocese. There is a vacancy in said office of Bishop, in the opinion of

this Court, and the Mother Church should fill that vacancy at once. We realize that the Mother Church (represented by Plaintiffs trial counsel) stoutly contends in its Briefs here that Firmilian, as the Bishop of one of the three newly-created Divisional Dioceses, has jurisdiction over all Lake County matters and properties; while the American Diocese (represented by Defendants trial counsel) just as stoutly contends in its Briefs here that virtually all activity that has occurred, Justice Davis' entire Opinion (and no doubt this Memorandum), are all in error. It is of interest to note, as Justice Davis does at Page 451 of his Opinion, that the Administrator of the Diocese and the Diocesan Bishop, when appointed, possess considerable power and authority.

We suggest that suitable orders or decrees be drafted and presented to the Circuit Court, and perhaps counsel for Plaintiffs should take the initiative in that regard. We regret exceedingly that personal misfortune, injury and ill health of the undersigned have caused considerable delay in the final studies of law and evidence in this case and thus have so long delayed the issuance of this Memorandum.

DATED: December 28, 1972.

L. Eric Carey
Judge

IN THE
CIRCUIT COURT OF LAKE COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a religious body, et al., Plaintiffs,	No. 63-1644	Consolidated No. 63-1644
vs.		
DIONISIJE MILIVOJEVICH, et al., Defendants.	No. 63-2312	

FINAL DECREE

This consolidated cause having come on to be heard for the entry of a Final Decree, the Court having filed its Memorandum Decision on December 28, 1972, and having heard the statements of counsel for the parties made in open court and being otherwise fully advised in the premises, finds and concludes as follows:

1. The plaintiffs are the Serbian Eastern Orthodox Diocese for the United States of America and Canada, a religious body duly organized and existing since 1921; Bishop Firmilian Ocokoljich, a Serbian cleric (hereinafter referred to as "Bishop Firmilian"); Bishop Sava Vukovich, a Serbian cleric; Bishop Gregory Udicki, a Serbian cleric; and certain representative individuals, both laymen (Emil Droback, Sam Milanovich and Donald Kral) and Clerics (Very Reverend Dusan Popovich, Very Reverend Dusan Klipa and Very Reverend Vladimir Mrvichin), who sue on their own behalf and on behalf of those persons,

lay and clerical, who recognize and adhere to ecclesiastical and hierarchical allegiance to the Serbian Orthodox Church whose Patriarchal See is located in Belgrade, Yugoslavia which church is one of fourteen recognized orthodox ecclesiastical and hierarchical churches in the world and is hereinafter referred to as the "Serbian Church."

2. The defendants are Dionisije Milivojevich (hereinafter referred to as "Dionisije"), a former Bishop of the Serbian Church, a former diocesan bishop and officer and agent of the Serbian Eastern Orthodox Diocese for the United States of America and Canada; the Serbian Eastern Orthodox Diocese of the United States of America and Canada, an Illinois religious corporation organized and existing since 1935 under the Illinois Religious Corporations Act (hereinafter referred to as the "Illinois religious corporation"); and, the Serbian Orthodox Monastery of St. Sava, an Illinois not-for-profit corporation organized and existing since 1945 under the Illinois Not-for-Profit Corporations Act (hereinafter referred to as the "Illinois not-for-profit corporation").

3. The Serbian Church is an ancient, world-wide, hierarchically organized church. Under the Serbian Church's hierarchical organization, the geographical territories throughout the world over which it assumes ecclesiastical authority and administration are designated, fixed and determined by the Church's Holy Assembly of Bishops and thereafter designated and set forth in its Constitution and each is designated a diocese of the Serbian Church; subject, however, to the provisions in the Constitution of the Serbian Church and the provisions in the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada, reserving to

the latter said Diocese full administrative freedom in all administrative aspects.

4. The sole power and authority to elect, ordain and assign a Diocesan Bishop rests in the Serbian Church's Holy Assembly of Bishops. Each Diocesan Bishop is, by virtue of his office as Diocesan Bishop, a member of the Holy Assembly of Bishops (hereinafter referred to as the "Holy Assembly"), the Serbian Church's highest hierarchical judicatory. At the head of the Holy Assembly is one of its number who is designated as Patriarch (the first among equals), who is elected to his office as Patriarch by the Holy Assembly and serves as its President. The executive branch of the Holy Assembly is the Holy Synod. It consists of the Patriarch and four other Diocesan Bishops selected by the Holy Assembly.

5. Neither the Illinois religious corporation nor its members have, nor have they or any of them ever had, the authority to elect, ordain, assign, reject or accept bishops. Any cleric purportedly elected to the office and rank of Bishop of the Serbian Church by any persons, groups or corporations or other entities other than the Holy Assembly were not and are not validly elected to the office and rank of Bishop, their election was and is in each instance null and void. No one of them is or has ever been a Bishop of the Serbian Church.

6. The Serbian Eastern Orthodox Diocese for the United States of America and Canada was created by the Holy Assembly in the early 1920's. Initially, Archimandrite Mardary was assigned to administer the affairs of the newly created diocese. On November 22, 1925, Mardary was elected by the Holy Assembly as Diocesan Bishop for the Diocese of the United States of America and Canada.

Prior to his death Bishop Mardary caused the Illinois religious corporation to be formed. It was organized on May 10, 1935 pursuant to the Illinois Religious Corporations Act, ch. 32, pars. 46(a)-(k). It has the powers and obligations as are set forth and defined in the Diocesan Constitution, the Constitution of the Serbian Church and the Illinois Religious Corporations Act, as amended (Ill. Rev. Stats. 1971, pars. 176-187).

7. All assets, real, personal, tangible and intangible transferred by the Illinois religious corporation (and all those acting under and pursuant to its authority), were so transferred to the aforedescribed Illinois not-for-profit corporation, Shadeland Corporation and Jackson Corporation subject to, and impressed with, the trust imposed upon those assets. Those assets and all accretions and additions thereto by increase in value, income, earnings, or otherwise have at all times pertinent hereto been held (and are now, and must continue to be held) for the use and benefit of those persons in the United States and Canada faithful to the Serbian Church and to the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

8. Dionisije was elected by the Holy Assembly in Belgrade, Yugoslavia, as Diocesan Bishop for the Serbian Eastern Orthodox Diocese for the United States of America and Canada in December, 1939. By virtue thereof he became and until suspended on May 10, 1963, served as the chief executive officer of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, the Shadeland Corporation, the Jackson Corporation, and the Diocesan Council. The Illinois religious corporation, the Illinois not-for-profit corporation, the Shadeland Corporation, the Jackson Corporation, and the

Priests' Pension Fund, are secular arms of the Serbian Eastern Orthodox Diocese for the United States of America and Canada. The Diocesan Council is the governing body of the Diocese for the United States of America and Canada.

9. On May 10, 1963, the Holy Synod suspended Dionisije. On July 27, 1963, the Holy Assembly removed and deposed Dionisije as Diocesan Bishop and on March 5, 1964, it defrocked him. These actions were valid, free and voluntary, binding ecclesiastical actions of the Holy Synod and Holy Assembly of the Serbian Church, taken wholly within their ecclesiastical power and authority. They were in no respect tainted with fraud, collusion, duress, or arbitrariness. Accordingly, they must be (and should have been) honored and accepted by defendants and each of them, and, as well, given full force and effect by this and other secular courts of, and in, the United States and Canada, with regard to their effect, ecclesiastically and otherwise, on the possession, control and administration of church property.

10. Dionisije, having been validly suspended on May 10, 1963, and deposed and removed from his position as Diocesan Bishop for the Diocese of the United States of America and Canada on July 27, 1963, and defrocked as a Bishop of the Serbian Church on March 5, 1964, was without power or authority from and after May 10, 1963 to act as, or to exercise any of the rights, privileges, duties, powers or authorities, dejure or defacto, of Bishop of the Diocese. From and after July 27, 1963, the office of Bishop of the Diocese for the United States of America and Canada became and remained and still is vacant, as did and are the offices of chief executive officer of the Illinois religious corporation, the Illinois not-for-profit corporation, the

Priests' Pension Fund, the Jackson Corporation, the Shadeland Corporation and the Chairmanship of the Diocesan Council, as well as other offices and positions of the Diocese and of each of the above-listed corporations, held by the Bishop of the Diocese by virtue of his office as Bishop.

11. The office of Bishop for the Diocese of the United States of America and Canada being vacant, the Holy Assembly had exclusive authority to fill that vacancy. Upon the entry of the order of suspension and pending the final disposition of the suspension of Dionisije and his ultimate reassignment to his office or his removal therefrom by the Holy Assembly, the Holy Synod had exclusive authority to appoint an Administrator of that Diocese of the United States of America and Canada.

12. The Holy Synod, following Dionisije's suspension, validly appointed Bishop Firmilian as Administrator for the Diocese of the United States of America and Canada on May 10, 1963. By virtue of that appointment, Bishop Firmilian has since then been, and is, pending the election of a Diocesan Bishop to succeed him, the chief executive officer of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, and the Diocesan Council, responsible for the administration for the benefit of, and as trustee for those who are members of and who are faithful and who give allegiance to the Serbian Church and the Serbian Eastern Orthodox Diocese for the United States of America and Canada, of all of the assets tangible and intangible, real and personal, owned, held, controlled and operated by each of the aforedescribed entities. As Administrator, he has, and has had since his appointment on May 10, 1963, the powers, authorities, rights, duties, privileges, emoluments, immunities,

offices and positions of the Administrator of the Diocese of the United States of America and Canada with the powers and subject to the limitations contained in the Constitutions of the Serbian Church and of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

13. Dionisije and those acting under his control and authority, have since May 10, 1963, illegally and improperly refused to recognize:

(i) the decisions of the Holy Assembly suspending, removing and defrocking Dionisije, and

(ii) the authority of Bishop Firmilian as Administrator for the Serbian Eastern Orthodox Diocese for the United States of America and Canada and as such, the holder of all offices and positions, rights, duties, powers, authorities, emoluments, immunities of Administrator, including, among others, the chief executive officership of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, and the Diocesan Council.

14. Bishop Firmilian's authority as Administrator of the Diocese for the United States of America and Canada is as set forth in the Constitutions of the Serbian Church and the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

15. The Illinois religious corporation has full administrative freedom with relation to possession, use and control of its real and personal property, tangible and intangible, provided, however,

(i) that it may not change or amend the Diocesan Constitution without the approval of the Holy Assembly,

(ii) that all said real and personal property, tangible and intangible, has been during all times pertinent hereto, and still is and will remain, property held in trust to be administered for the benefit of those faithful in the United States and Canada who are faithful to the Serbian Church, and the Serbian Eastern Orthodox Diocese for the United States of America and Canada; and

(iii) the Illinois religious, Shadeland and Jackson Corporations and the Priests' Pension Fund may not employ any of their property contrary to the trust imposed thereon.

16. The changes and amendment to the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada purportedly enacted subsequent to May 10, 1963, not having been approved by the Holy Assembly are null and void and without any force or effect, defacto or dejure.

17. By virtue of the authority conferred upon it by the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada, the Diocesan Council has apparently managed all the temporal affairs of the Serbian Eastern Orthodox Diocese from May 10, 1963 to the present and there has been no evidence presented to this Court of any breach of the trust imposed upon the assets, or wrongdoing, with the assets of the Illinois religious corporation or Illinois not-for-profit corporation since May 10, 1963. The Court further finds that the financial and administrative matters conducted by the Sabors since May 10, 1963 have apparently been in accordance with the Constitution of the Serbian Eastern Orthodox Diocese except to the extent that the Sabors purported to amend the Diocesan Constitution without the approval of the Holy Assembly of Bishops.

18. Absent the calling and holding of a Sabor pursuant to the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada and appropriate actions of the Sabor, it was improper for the Holy Assembly to initiate or effect a division or reorganization of the entire Diocese for the United States of America and Canada and of the Illinois religious corporation into three new dioceses and, therefore the action of the Holy Assembly purporting to reorganize and divide the Serbian Eastern Orthodox Diocese into three new dioceses and to appoint a Diocesan Bishop of each of the new dioceses is invalid, null and void and of no force or effect, dejure or defacto.

19. Bishop Firmilian in his capacity as the Administrator of the Serbian Eastern Orthodox Diocese for the United States of America and Canada is authorized to do those acts permitted under the Serbian Church Constitution and the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada and may undertake no action inconsistent with this decree or those Constitutions.

20. All Serbian Church congregations in the United States of America and Canada who profess loyalty to the Serbian Church with its Patriarchal See located in Belgrade, Yugoslavia, and the Serbian Eastern Orthodox Diocese of the United States of America and Canada with its Diocesan See located in Libertyville, Illinois, are members of the Serbian Eastern Orthodox Diocese for the United States of America and Canada regardless of what position said churches may have taken with regard to the Serbian Church and the aforesaid Diocese from May 10, 1963 until the date of the entry of this Decree.

In view of the within and foregoing findings and conclusions:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The decisions and actions of the Holy Assembly and the Holy Synod relating to the suspension, removal and defrockment of Dionisije were in no way tainted with fraud, collusion, duress, undue influence or arbitrariness. They were in all instances voluntary and legally authorized actions and they were valid, authorized and proper ecclesiastical decisions of the highest judicatories of the Serbian Church, and are in all respects binding upon this Court.

2. Bishop Firmilian was validly appointed by the Holy Synod to be and has been since his appointment on May 10, 1963 the Administrator of the Diocese for the United States of America and Canada in replacement of Dionsije. Until replaced by a Diocesan Bishop elected and assigned by the Holy Assembly, Bishop Firmilian possesses the authority, rights, duties, emoluments, privileges, immunities, offices and positions which are more particularly set forth in the Constitutions of both the Serbian Church and of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

3. The office of Bishop of the Serbian Eastern Orthodox Diocese for the United States of America and Canada is now and has been since July 27, 1963 vacant. The Holy Assembly has the exclusive authority to fill that vacancy.

4. Defendants, and each of them, and all persons, firms, corporations and entities who have acted or who are acting under, with, or pursuant to their order or direction or in concert with them, are ordered to recognize Bishop Firmilian as the Administrator of the Serbian Eastern Orthodox Diocese for the United States of America and

Canada and his authority as is set forth in the Constitutions of the Serbian Church and the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

5. The Illinois religious corporation, has full administrative freedom within the entire political territory of the United States of America and Canada and it may independently regulate and rule the activities of its churches, schools and other diocesan institutions subject to the trusts hereinbefore set forth, and the Serbian Church with its See in Belgrade, Yugoslavia, other than having the power to approve or disapprove amendments to the Constitution of the Serbian Eastern Orthodox Diocese of the United States of America and Canada has no right or authority to interfere with the management of the property of the Serbian Eastern Orthodox Diocese.

6. Any purported changes or amendment to the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada purportedly enacted subsequent to May 10, 1963 are null and void and do not now nor have they ever had any defacto or dejure force or effect.

7. The May 10, 1963 decision of the Holy Assembly of Bishops dividing the Serbian Eastern Orthodox Diocese for the United States of America and Canada into three new dioceses, was illegal, invalid and unenforceable because it is in violation of the Constitutions of the Serbian Church and the Serbian Eastern Orthodox Diocese and all acts of the bishops and officers of the three new dioceses as alleged successors to the American-Canadian Diocese are null and void.

8. Dionisije has not been a Bishop of the Serbian Church since March 5, 1964, nor a Bishop of the Serbian Eastern Orthodox Diocese for the United States of America and Canada since July 27, 1963, nor, since May 10, 1963, the chief executive officer of the Illinois religious corporation, the Illinois not-for-profit corporation, the Shadeland Corporation, the Jackson Corporation, the Priests' Pension Fund, or the Diocesan Council, nor has he had authority since May 10, 1963 to exercise any ecclesiastical or administrative authority or power whatever with respect to the property or affairs of said corporations, Council and Fund or any committee or group associated with them.

9. The Court retains jurisdiction of this cause for the purpose of entering any further orders or decrees necessary, appropriate or desirable in order to execute, enforce and carry out this Decree.

10. The court costs in this consolidated cause shall be calculated by the Clerk of Court, assessed and paid one-half by plaintiffs as a group and one-half by defendants as a group.

11. Nothing shall delay the enforcement or appeal of this decree.

ENTER:

L. Eric Carey

Dated: April 30, 1973.

APPENDIX C

Serbian Eastern Orthodox Diocese for United States of America and Canada, etc., et al., Plaintiffs-Appellees, v. Firmilian Ocokoljich, et al., Defendants-Appellants.

The Right Reverend Bishop Firmilian Ocokoljich, et al., Plaintiffs-Appellants, v. Dionisije Milivojevich, Defendant-Appellee.

Gen. No. 65-40.
Second District.
April 7, 1966.
Supplemental opinion September 7, 1966.
Rehearing denied September 7, 1966.

Mr. Justice Davis delivered the opinion of the court.

This appeal involves two actions—consolidated in the trial court—which narrate a dispute over the control of the Serbian Eastern Orthodox Diocese for United States and Canada, and the property and assets of this Diocese, and of a related institution. The trial court determined this matter by granting a summary judgment in one suit, and granting a motion to dismiss in the other. The judgment and order were based upon extensive pleadings, depositions and affidavits. Because of the summary presentation and the conflicting representations of the parties, the factual background necessary to an understanding of the case, is not in all respects certain.

We will relate the church and corporate histories, and the church and corporate laws of the institutions involved, as best we comprehend them under the posture of this appeal, in that such background is essential to an understanding of the issues involved in these pleadings.

In California and Pennsylvania in the 1890's, Americans of Serbian descent formed completely autonomous religious associations. In 1917, these Serbian church societies became associated with the Russian Orthodox Church which sent Father Mardarije Uskokovich to this country to organize an "independent" Serbian Diocese in America.

In the 1920's, the Diocese in this country beame affiliated with the Serbian Orthodox Church of Yugoslavia. This Diocese was incorporated in 1927 under the laws of the State of Illinois, as a religious society, under the name of "Serbian Orthodox Diocese Council for United States and Canada." It duly adopted a Constitution, which was aproved by the Serbian Orthodox Church of Yugoslavia.

This charter was permitted to lapse, and in 1935, a new religious society was again incorporated under the laws of the State of Illinois, and was called "Serbian Eastern Orthodox Diocese for United States of America and Canada." Its Constitution was substantially the same as that of the first corporation and it was likewise approved by the Serbian Orthodox Church of Yugoslavia.

The Holy Bishops Assembly of the Serbian Orthodox Church, Yugoslavia, elected Dionisije Milivojevich as Bishop in 1938, and the following year appointed him as Bishop of the Diocese in this country. When King Peter II of the Kingdom of Yugoslavia was deposed by the Communists in 1944, Bishop Dionisije became concerned that efforts might be made by the Communist government to obtain control of the property of the Diocese in this country. Consequently, this religious corporation, acting through its Diocesan Council, which is hereafter more fully defined, adopted a resolution calling for the incorporation—under the general not-for-profit corporate laws

of the State of Illinois—of a separate corporation, to which the assets of the religious corporation would be transferred and in which the title to the various assets would be held. Such a corporation was formed in the year 1945 under the name "Serbian Orthodox Monastery of Saint Sava."

Before completing this chronology, we will briefly relate the relevant portions of the Constitutions and By-laws of the Serbian Orthodox Church; of the Serbian Eastern Orthodox Diocese for the United States of America and Canada, the religious corporation; and of the Serbian Orthodox Monastery of Saint Sava, the not-for-profit corporation.

The Constitution of the Serbian Orthodox Church (with its headquarters in Belgrade, Yugoslavia) sets forth that the Serbian Orthodox Church is autocephalous, and governs and regulates independently, all of its religious affairs; and that it has the rank of a Patriarchate and maintains dogmatic and canonical unity with all other Orthodox Churches. It provides that the Church is episcopal with the main administrative divisions "composed of dioceses, both in regard to church hierarchical and church administrative aspect."

Article 10 provides that there are the following church hierarchical and administrative authorities, bodies and organs:

> "1. Patriarch, Holy Bishop's Council and Holy Synod, High Ecclesiastical Court, Patriarchal Council and Patriarchal Board;
>
> "2. Diocesan Bishop, diocesan ecclesiastical court, diocesan council and diocesan executive board; . . . ."

Additional authorities at a level below the dioceses are then set forth which are not pertinent to this decision.

It is provided in Article 12:

> "The Serbian Orthodox Church is episcopal. Its main administrative division is composed of dioceses, both in regard to *church hierarchical and church administrative aspect.*" (Emphasis ours.)

Article 13 provides in part:

> "At the head of each diocese there is the diocesan bishop as its direct ruler. He is, according to the church canonical regulations, chief representative and guiding leader of all church spiritual life and church order in the diocese and he rules the diocese assisted by his clergy and laymen."

Article 14 reads: "These are the Dioceses in the Serbian Orthodox Church. . . ." It then lists a number of dioceses, all located within Yugoslavia. Article 15 provides that in addition to the dioceses previously named, there are additional dioceses outside of Yugoslavia "under the jurisdiction of the Serbian Orthodox Church *in spiritual and hierarchical aspect.*" (Emphasis ours.) Among those listed is the Serbian Orthodox Church in the United States of America and Canada. Article 16 provides that "Decisions of establishing, naming, liquidating, reorganizing, and the seat of dioceses . . . is decided by the Holy Council of Bishops, in agreement with the Patriarchal Council." For the reasons hereinafter stated, we believe that Article 16 applies only to those dioceses of the Serbian Orthodox Church which are under its jurisdiction in both church hierarchical and church administrative aspects.

Next, in the body of private laws governing the institutions before the court, is the Constitution of the Diocese. It states that the Diocese "is considered ecclesiastically

—judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia." Article 2 provides that "All statutes and rules which regulate the ecclesiastical—canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory" on the Diocese "with the exception of specific cases which must be formulated with regard to local circumstances in accordance with ecclesiastical and judicial principles."

Article 3 of this Constitution provides that the jurisdiction of this Diocese includes the entire political territory of the United States and Canada, which by its geographical location enjoys "full administrative freedom" under which "it can independently regulate and rule the activities of its church, schools and other diocesan institutions and all funds and beneficiaries, through its organs, but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada." The highest legislative and administrative authority of the Diocese is the Diocesan National Assembly; its executive and administrative organ is the Diocesan Council. The Diocesan Assembly is opened by the Diocesan Bishop. One of its functions is to make changes and amendments to the Constitution "with the approval of the Holy Bishop's (sic) Assembly of the Serbian Patriarchate."

Article 9 provides that the Bishop of the diocese shall be appointed by the Holy Assembly of Bishops of the Serbian Patriarchate. Article 13 specifies that when the seat of the Diocese Bishop is vacated, the administration of the Diocese, in spiritual and administrative matters, shall be upheld by the Diocesan Ecclesiastical Court and Diocesan Council until an administrator is appointed

"by the Serbian Patriarch with the Holy Pontifical Synod." Article 14 provides that the Diocesan Bishop is the supreme head of the St. Sava Monastery in Libertyville and that he appoints the abbot of the monastery and "conducts the canonical supervision and the higher executive authority over the monastery."

Article 149 provides that the property owned by the Diocese is "to serve exclusively for the purpose designated by the statutes of this Constitution and cannot be used for any other purpose." Article 155 provides that the Diocesan Fund consists of "all funds and assets which the Serbian people of the entire Diocese, individually or collectively through their church-school congregations and other various societies and organizations should establish, increase and dedicate to the mutual necessities of its church and school for the religious and educational aims of the entire Diocese." It further provides that the Diocesan Fund is to be supervised by the Diocesan Council. Article 156 provides that all real estate and personal property of the St. Sava Monastery in Libertyville is supervised by the monastery's administration "under the direct control of the Diocesan Bishop."

The Bylaws of the Serbian Orthodox Monastery of Saint Sava—the not-for-proft corporation formed in 1945—provide that it is an autonomous Serbian Church institution; and further provide that the corporation "possesses its own property which cannot be disposed of, sold, mortgaged or otherwise conveyed by any Serbian Church authority, without the consent and approval of the Diocesan Council, headed by the Bishop and the Dioceson Church conventions."

Article V provides that the Diocesan Bishop, "received as such by the Diocesan Council, by the Diocesan Church court and by the Diocesan Convention, is the supreme head of the Monastery and is the general overseer according to the Holy Canons of the Church. (By-Law 156 of the Diocese.)" Article VI of the Bylaws provides that the "president of the Board of Directors shall be the canonical Bishop of the Diocese, received as such by the Diocesan Council, by the Diocesan Church Court and by the Diocesan Convention."

With the above Constitutions and corporate histories in mind, we considered the following chronology of events: On May 10, 1963, the Holy Episcopal Synod of the Serbian Orthodox Church of Yugoslavia suspended Bishop Dionisije, and at the same time appointed Firmilian Ocokoljich as administrator of the Diocese; on May 17, 1963, its Holy Episcopal Council disbanded the American-Canadian Diocese and in its place established three new Dioceses, which extended beyond the borders of the United States and Canada and included South Africa and South America; and on said latter date, the Holy Episcopal Synod appointed Firmilian Ocokoljich, Gregorije Udicki and Stefan Lastavica as temporary administrators of the respective Dioceses. The Holy Bishops' Council, on July 27, 1963, discharged Bishop Dionisije as Diocesan Bishop and elected Bishop Firmilian as Diocesan Bishop in his place. It is significant that Bishop Firmilian was not elected as Bishop of the Serbian Orthodox Diocese Council for United States and Canada, but rather was elected as Bishop of one of the three newly created Dioceses. The other two temporary administrators were likewise each respectively elected as a Bishop of one of the other two newly created Dioceses.

The Diocesan National Assembly adopted a resolution declaring the division of the Diocese into three Dioceses, to be unlawful and unconstitutional, and refused to recognize the suspension of Bishop Dionisije or the election of the other three Bishops. The Holy Bishops' Synod of the Serbian Orthodox Church responded by declaring the Diocesan National Assembly unlawful. In reply to this, the Diocesan National Assembly, at an adjourned meeting held in November, 1963, passed amendments to the Diocese Constitution, declaring the autonomy of the Diocese and its freedom from all control of the Patriarchate in Belgrade. These amendments were not submitted to the Holy Bishops' Assembly for approval. On March 15, 1964, the Holy Episcopal Council, comprised of the Patriarch, Metropolitan and Diocesan Bishops of Yugoslavia defrocked Bishop Dionisije.

The appellees, referred to herein as the "Dionisije faction," brought the first suit in the names of the religious and not-for-profit corporations against the three Bishops of the new Dioceses, appellants, referred to herein as the "three Bishops faction," praying that none of the defendants be permitted to interfere with the administration of the properties of the plaintiff corporations. The "three Bishops faction" brought the second suit praying that the court find that Bishop Dionisije had been removed as Bishop; that the three Bishops be found to be lawfully appointed and be permitted the use of all the Diocesan properties; that only those members of the Church, who recognize the three Bishops, be acknowledged as members of the Serbian Orthodox Church for the Diocese of the United States and Canada; that the two corporations be found to hold their assets in trust for members of the Serbian Orthodox Church residing with-

in the Dioceses, and for other similar relief. As indicated, the trial court consolidated these actions, considered the pleadings, depositions and affidavits, and granted the "Dionisije faction" summary judgment on their complaint and granted their motion to dismiss the complaint of the "three Bishops faction."

The appellants contend that the issue before this court is simply whether they or the appellees, are entitled to exercise the religious authority of the Serbian Orthodox Church in this country. Appellants assert that only ecclesiastical matters are involved, and the appellees urge that only the property rights of Illinois corporations are embraced in this litigation.

We believe that both contentions are correct, in part. While both factions claim the right to control the properties and assets held by the Illinois corporations, neither the religious nor the not-for-profit corporation may claim title to or use of the assets free of trust or use for the benefit of the members of the Diocese. The determination of the disputed right to control such properties and assets cannot be made solely by resolving the question of title or the exercise of corporate authority under the Illinois corporate laws.

Article 155 of the Constitution of the Diocese imposes a trust upon the use of the Diocesan Fund and Article 149 further limits the use of the property "to serve exclusively for the purpose designated by the statutes of this Constitution and cannot be used for any other purpose." Section 46f of the Religious Corporations Act (Ill Rev Stats 1963, c 32, par 181) further imposes such a trust, which arises by operation of law in the absence of a declaration of trust or use in the gift, devise or grant in the instrument giving the property to the Church.

By the same token, the resolution of the Diocesan Council calling for the creation of the not-for-profit corporation to which the assets of the Diocese were to be transferred, can only have validity if this trust is likewise to follow the assets into the hands of this corporation and govern the administration of such assets. The creation of the Serbian Orthodox Monastery of Saint Sava, pursuant to the resolution of the Diocesan Council, is consistent with the degree of autonomy and administrative freedom reserved by the Diocese unto itself in Article 3 of the Constitution which provides that "it can independently regulate and rule the activities of its church, schools and other diocesan institutions and all funds and beneficences, through its organs." The by-law of the not-for-profit corporation providing that its property "cannot be disposed of, sold, mortgaged or otherwise conveyed by any Serbian Church authority without the consent of the Diocesan Council, headed by the Bishop and the Diocesan Church conventions" is not inconsistent with either the trust imposed or the Constitutional requirements of the Diocese.

It is within the framework of these organizational laws that this dispute must be resolved. The protection of the law extends to religious associations the same as to other voluntary associations of benevolent or charitable purposes. The rights of property or other civil rights of such associations are equally under the protection of law, and the actions of their members, subject to its restraints. Ginossi v. Samatos, 3 Ill App2d 514, 520, 123 NE2d 104 (1st Dist 1954).

In Watson v. Jones, 13 Wall 679 (1871), 20 L Ed 666, the United States Supreme Court set forth the three categories of cases which have come before the courts

pertaining to the rights of property held by ecclesiastical bodies, namely: (1) When the property, by the express terms of the instrument under which it is held, must be devoted to some specific form of religious doctrine or belief; (2) When the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority; and (3) Where the ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judicatory over the whole membership of the general organization.

The Supreme Court in Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 US 94 (1952) at page 110, 97 L Ed 120, 133, 134, also defined the third group—the hierarchical churches—as those organized as a body with other churches having similar faith and doctrine, with a common ruling convocation or ecclesiastical head. We do not believe it can seriously be contended that the American Diocese is not a part of such a hierarchical structure. The constitutions referred to above abound with references to the hierarchical framework, with the Serbian Orthodox Church as the General Church. The Church history indicates this is so, and the manner of incorporating the Diocese in this country further evidences this fact.

There are two methods of incorporating religious societies under the Illinois Religious Corporations Act: sections 35-46 inclusive of the Act provide for the incorporation of independent church organizations (Ill Rev Stats

1963, c 32, pars 164-175, incl.); and sections 46(a)-(k) inclusive, provide for the incorporation of any church organization which is "under the patronage, control, direction or supervision of any ecclesiastical body, diocesan or like ecclesiastical officer. . . ." (Ill Rev Stats 1963, c 32, pars 176-186, incl.) The Diocese in this country was incorporated in 1935 under the latter provisions. This fact, together with the constitutional language, church history and practice, clearly establishes the hierarchical nature of the Serbian Orthodox Church. Ginossi v. Samatos, supra, at 525.

In disputes involving churches, hierarchical in nature, the secular courts must accept the decisions of the ecclesiastical judicatories within the structure, as to questions of discipline, faith or ecclesiastical rule, custom or law. If a civil right depends upon an ecclesiastical matter, the civil court must take the ecclesiastical decisions as it finds them. Watson v. Jones, supra; Ferraria, et al. v. Vasconcellos, et al., 31 Ill 25, 46 (1863). It is only where the decision of a church tribunal is tainted with fraud, collusion or arbitrariness that the decision need not be accepted by the secular court. Gonzalez v. Roman Catholic Archbishop of Manila, 280 US 1, 16, 17 (1929), 74 L Ed 131, 137.

The appointment and removal of a Bishop is clearly a canonical act. Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church of North America, supra; Gonzalez v. Roman Catholic Archbishop of Manila, supra. We may not alter what was done by the ecclesiastical governing authorities in this respect. It is clear that the Diocese recognized the right of the Serbian Patriarchate in this regard by providing in Article 9 of its Constitution that its Bishop shall be appointed by the Holy As-

sembly of Bishops and by recognizing in Article 2, the ecclesiastical-canonical authority of the Serbian Orthodox Church in the Kingdom of Yugoslavia. We must in this regard accept the ecclesiastical determination that Dionisije is not the Bishop of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

We do not accept that it must necessarily follow, however, that the action of the Serbian Orthodox Church in dividing this Diocese into three new Dioceses, and changing its boundaries, and in appointing Bishops for the three supposedly new Dioceses, is proper. We find that there was manifested in the Constitution of the Diocese a very evident intent to retain autonomy and independence in the administration of its affairs while accepting the ecclesiastical-canonical authority and position of the Serbian Orthodox Church of Yugoslavia. Thus, Article 2 provides that the Diocese is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate. It does not state that the Diocese is considered as a part of the Patriarchate administratively. Article 3 provides that the Diocese is to enjoy *full administrative freedom* within the entire political territory of the United States of America and Canada, under which "it can *independently regulate and rule* the activities of its church, school and other diocesan institutions and all funds and beneficences, through its organs, but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada."

Further, the Diocese did not surrender to the Serbian Patriarchate the power to alter or change its basic governing law—its Constitution. The Serbian Patriarchate was not given the power to initiate changes in the Diocesan Constitution, but was only given the power to approve changes to the Constitution introduced and adopted by the Diocesan Assembly. It is inconceivable to us that the Serbian Patriarchate, which is denied the express power to alter or amend the Constitution of the Diocese, has the implied power to totally revoke and abrogate this constitution by decreeing the Diocese to no longer be in existence. We cannot accept such conclusion and find the Constitution of the Serbian Patriarchate and that of the Diocese consistent in this regard.

Article 12 of the Patriarchate's Constitution provides that the Diocese is the main administrative division of the church in both the church hierarchical and church administrative aspect, and Article 14 significantly states: "These are the Dioceses in the Serbian Orthodox Church" and thereafter lists only the Dioceses within Yugoslavia. In a separate Article—Article 15—there are listed the Dioceses which are "under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect." Article 15 does not mention or specify that the Dioceses there listed are under the jurisdiction of the Serbian Church in the administrative aspect. It is there that the American-Canadian Diocese is listed. We believe that Article 16—granting power to establish, liquidate and reorganize Dioceses—applies only to those completely subordinated to the Serbian Orthodox Church, in the administrative aspect as well as in the spiritual and hierarchical aspect, as set forth in Article 12.

The appellees have argued that the Diocesan Assembly, as the highest executive and administrative body of the Diocese, had the power, by majority vote to amend its Constitution, and they cite Kuns v. Robertson, 154 Ill 394, 414, 40 NE 343 (1895) as authority on this point.

However, in Kuns, the Constitution contained no provision—as did Article 23(8) of the Diocesan Constitution—that the highest body of the Diocese (the Assembly, in the case at bar) in amending its Constitution, must also obtain the approval of yet another society (the Holy Bishops' Assembly of the Serbian Patriarchate, in the case at bar). As we understand the appellees' position, they claim to have validly amended the Constitution in 1963 by the action of the Diocesan Assembly alone; they do not assert that they renounced its force and effect. Having failed to obtain the aproval of the Holy Bishops' Assembly as required by the Constitution, the purported amendments cannot be valid.

In Lawson, et al. v. Kolbenson, et al., 61 Ill 405 (1871), the court held that the congregation could act by its majority and could not be controlled by a higher religious body—a synod. However, we must note the type of religious organization which the court had under consideration when making this pronouncement. At page 421, the court stated:

> "This church organization is unlike those of other denominations, where they can not exist at all except in subordination to a higher and controlling organization. This church had a complete legal existence, self-governing in character, before it united with any synod."

The Lawson case, like the Ginossi case, supra, both cited by the appellees, are the second type of case noted in Watson v. Jones, where the religious organization is completely independent of other ecclesiastical associations. They are not relevant to our determination.

The appellees suggest that the case of Romanian Orthodox Missionary Episcopate v. Trutza, 205 F2d 107 (CA 6th, 1953) is authority for the proposition that they had

the right to amend their Constitution so as to elect their own Bishop and declare their complete autonomy. Again, the bylaws and history of the Church show that Trutza is factually inapposite. In Trutza, the sole issue was defined as the right of the Episcopate to elect its own Bishop. When enacted, the bylaws provided that the Episcopate was autonomous and had power to elect its own Bishop; and that the Episcopate maintained only spiritual and canonical unity with the Romanian Orthodox Church. Thereafter, a Bishop obtained an amendment to the bylaws providing for the election of future bishops by the Holy Synod in Bucharest, and later the Episcopate further amended its bylaws to again restore this power to the Episcopate. It is nowhere contended in Trutza that any of the amendments were made in contravention of the provisions of the existing bylaws. Such is not the case here.

The appellees also rely upon the case of Russian Orthodox Greek Catholic St. Peter & St. Paul's Church of Lorain v. Burdikoff, 177 Ohio App 1, 189 NE2d 451 (CA Ohio 1962) and Ginossi, supra. In Burdikoff, the Patriarch of Moscow had long recognized the autonomy of the Metropolia in this country. The court held that the Patriarch was presented either by laches or by estoppel from now asserting its control over the Metropolia. On the record in the case at bar, we find no such basis for asserting that the appellants are prevented by laches from asserting control. In Ginossi, the Constitution of the Diocese reserved unto the Diocese "absolute and unqualified" power to amend its constitution and bylaws. Such reservation was absent in the case at bar.

The Supreme Court in Kedroff, at page 116, in referring to the case of Watson v. Jones stated: "The opinion radiates, however, a spirit of freedom for religious

organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." This theory is applicable, however, not only to the mother religious organization, the Serbian Orthodox Church, but also to the member religious organization, the Serbian Eastern Orthodox Diocese for United States of America and Canada. In addition to being religious societies, both are constitutional societies existing within the framework of their respective bodies of law. To the extent that the Diocese retained unto itself certain matters of church government by its Constitution, it is not for the Serbian Orthodox Church to usurp these functions by the pretended power of its higher hierarchical authority.

In the last analysis it must be said that all church societies may not lend themselves precisely to the three categories set forth in Watson v. Jones, supra. As indicated in the divergence of constitutional provisions of the cases which have been before the courts, there may be varying degrees of autonomy. Where, as here, the Diocese has reserved unto itself certain powers of church administration and government, and granted unto a superior tribunal, limited powers—such as the appointment of its head and the approval of any changes in its fundamental law—those reserved powers must be protected not only from State interference, but also from interference from other ecclesiastical societies.

From the views we have expressed herein, the Serbian Orthodox Church has authority to make the ecclesiastical decisions relative to the removal and appointment of a Bishop for the Serbian Eastern Orthodox Diocese for United States of America and Canada, as well as the ap-

pointment of a temporary administrator. It exceeded its authority, however, and infringed upon the authority of the Diocese when it purported to change the geographical structure of the Diocese and eliminate its reserved administrative powers, including the control over Church properties, subject to the trust imposed thereon, by dissolving the Diocese and creating three new Dioceses.

Accordingly, the summary judgment granted by the trial court in cause No. 63-1644 is hereby reversed, as is the order dismissing the amended complaint in Cause No. 63-2313; and the causes are remanded with directions to the trial court to proceed, under proper pleading, with a full hearing on the merits of the causes in accordance with the views expressed herein.

Reversed and remanded with directions.

MORAN, P.J. and ABRAHAMSON, J., concur.

SUPPLEMENTAL OPINION ON DENIAL OF PETITION FOR REHEARING

Plaintiffs-appellees, in their petition for rehearing, vigorously contend that the court has misapprehended certain points raised in their brief. We deem this case of sufficient significance to warrant elaborating on our opinion concerning these matters.

Plaintiffs-appellees first contend that the opinion should be corrected to read that the Holy Episcopal Council of the Serbian Orthodox Church of Yugoslavia on May 10, 1963 purported to divide the American-Canadian Diocese into three new Dioceses, and on May 17, 1963, the Holy Episcopal Synod, in executing this decision, appointed Firmilian as temporary administrator of one of the three supposedly newly created Dioceses in place of Bishop

Dionisije. This is all quite true and, as pointed out in the opinion, the Serbian Orthodox Church exceeded its authority in these respects. It was without authority to disband the American-Canadian Diocese, and it follows that the purported appointments of temporary administrators and Bishops of these supposedly new Dioceses were without validity.

This decision was, however, only one of the decisions made at the May 10 meeting. The Holy Episcopal Synod, under the date of May 17, 1963, and under No. 1725/2a p 237 and under No. 1726/2a p 238, notified Firmilian of the decision to divide the Diocese and of the facts that Dionisije was Bishop of the newly created Middle Western American Diocese, and having been suspended, that he, Firmilian, was temporary administrator. Under our opinion, this notice and these decisions were likewise void.

Previously, however, under date of May 10, 1963, and under No. 1664/2a p 188, the Holy Episcopal Synod advised Bishop Dionisije that, as of that date, it had suspended him as Bishop of the American-Canadian Diocese pending examination of the charges against him, and that it was appointing Firmilian as temporary administrator thereof in his place. In our original opinion, we held that these ecclesiastical decisions were within the power of the Holy Episcopal Synod, and, as a result, Firmilian was validly appointed temporary administrator, not of one of the supposedly new Dioceses, but of the original American-Canadian Diocese. Later Bishop Dionisije was discharged as such Diocesan Bishop.

Plaintiffs-appellees object to that part of the opinion wherein we state, "We must, in this regard, accept the ecclesiastical determination that Dionisije is not the Bish-

op of the Serbian Eastern Orthodox Diocese for the United States of America and Canada." They complain that appellants are quoting this sentence for propaganda purposes; that the trial court did not hold a hearing on appellants' complaint, having dismissed it; and that the appellees thus did not have to present proof of such factors as might justify a secular court in not accepting the ecclesiastical decision of a church tribunal.

Our opinion was based on the summary presentation and the conflicting representations of the parties. No testimony was taken at the trial. Consequently, it was not our intent to prejudge what might be presented to the trial court on remandment in an orderly and complete hearing of these consolidated cases on their merits. If, upon proper pleadings, competent testimony and other valid evidence, the appellees can present a case which would warrant and justify the trial court—a civil court—in not accepting a pertinent ecclesiastical decision or decisions, we do not mean to be understood to preclude them from doing so. Our purpose in remanding the case is to afford all of the litigants a complete and full hearing on the merits pertaining to the many issues and questions involved. The factual background of this case is indeed significant, but it is not without dispute, as is evidenced by the numerous conflicting representations made to the court through extensive pleadings, depositions, affidavits, and briefs.

The legal conclusions reached in our opinion are based upon the facts as they appear to us as the case stands at this juncture. Should a full hearing develop factual matters of significance, different from those upon which this opinion is based, then our opinion would be limited accordingly.

While we have due respect for the law of judicial parsimony, we do not believe that an opinion should judicially shortchange the litigants by failing to chart a course of procedure upon return to the trial court. Such failure would aggravate, rather than aid, in the ultimate disposition of the litigation, as well as encourage further appeals.

We will only briefly comment on the contention raised upon rehearing that the 1935 Constitution of the American-Canadian Diocese was a mere contract or compact between it and the Serbian Orthodox Church, which the latter repudiated, renounced and abandoned when it sought to dissolve the Diocese, and that thereafter the Diocese did not have to obtain approval of Constitutional amendments by the Holy Bishops' Assembly as required by the Diocesan Constitution.

To us the Constitution of the Diocese is something more than a contract or compact under which certain powers were delegated by the Diocese which could allegedly be restored unto it upon a repudiation of the contract. We view the Diocesan Constitution, together with the Constitution of the Serbian Orthodox Church, as expressions of the fundamental laws governing the relationship and authority of these respective church organizations—which were thereby joined in certain respects in a hierarchical and episcopal structure—as distinguished from an autonomous or congregational church entity. An act contrary to such constitution is not a repudiation, permitting the Constitution to be abandoned and ignored. Such act is rather without validity, force or effect.

For these reasons, we adhere to the opinion herein as originally adopted, subject to the limitation expressly set forth above.

Moran, P.J. and Abrahamson, J., concur.